

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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In re: :  
DELPHI CORPORATION, *et al.*, : Chapter 11  
Debtors. : Case No. 05-44481 (RDD)  
: (Jointly Administered)  
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**WORLDWIDE BATTERY'S (I) RESPONSE IN OPPOSITION  
TO THIRD OMNIBUS CLAIMS OBJECTION (REF. CLAIM NO. 2479), and  
(II) MOTION FOR ENLARGEMENT OF TIME  
TO SUBMIT ADDITIONAL EVIDENCE IN SUPPORT OF PROOF OF CLAIM**

For its response in opposition to the Third Omnibus Claims Objection filed by Delphi Corporation and certain of its subsidiaries and affiliates (collectively, "Debtors"), and for its motion for enlargement of time to submit additional evidence in support of its Proof of Claim (Claim No. 2479), WorldWide Battery Company, LLC ("WorldWide"), states:

***Procedural History***

1. On October 8 and 14, 2005, Delphi Corporation and certain of its subsidiaries and affiliates filed voluntary petitions for bankruptcy relief under Chapter 11 of Title 11 of the United States Bankruptcy Code. Thereafter, the Court directed that the bankruptcy cases be jointly administered.

2. On April 3, 2006, WorldWide timely filed its Proof of Claim, identified as Claim No. 2479, a copy of which is attached hereto as Exhibit A.

3. WorldWide's Proof of Claim alleges that debtor Delphi Corporation is liable for damages to WorldWide in the amount of \$2,819,166.35, based on breach of a contract between Delphi and WorldWide. As is set forth in the Proof of Claim, WorldWide's claim was calculated

based on lost profits of over \$80,500 per month, for the period of August 2005 to the end of the original contract term on June 30, 2008. (See attached Exhibit A.)

4. On October 31, 2006, Debtors filed their *(I) Third Omnibus Objection (Substantive) pursuant to 11 U.S.C. § 502(b) and Fed. R. Bankr. P. 3007 to Certain (A) claims with Insufficient Documentation, (B) Claims Unsubstantiated by Debtors' Books and Records, and (C) Claims Subject to Modification, and (II) Motion to Estimate Contingent and Unliquidated Claims pursuant to 11 U.S.C. § 502(c)* ("Third Omnibus Claims Objection").

5. In their Third Omnibus Claims Objection, Debtors object to and seek disallowance of 1,017 of the approximately 16,000 Proofs of Claim filed against the Debtors. (Claim Objection and Estimation Procedures Motion at 7-8.)

6. With regard to WorldWide's Proof of Claim, Debtors request that the Court enter an Order disallowing and expunging WorldWide's claim as an "Unsubstantiated Claim," defined by the Debtors as those Proofs of Claim that assert liabilities or dollar amounts that are not owing pursuant to the Debtors books and records. (Third Omnibus Claims Objection at 11-12 & Exhibit C-1.)

7. This Court has jurisdiction over the Debtors' Third Omnibus Claims Objection and WorldWide's response thereto pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

#### *Standard of Review*

8. The standard for resolving Debtors' objection to WorldWide's claim has been articulated as follows:

The burden of proof for claims filed in bankruptcy cases rests on different parties at different times. Initially, the claimant must allege facts sufficient to

support a legal basis for the claim. If the assertions in the filed claim meet this standard of sufficiency, the claim is prima facie valid. *In re Allegheny International, Inc.*, 954 F.2d 167, 173 (3d Cir. 1992). The burden then shifts to the objector to produce evidence sufficient to contest the validity of the prima facie claim. *Id.* Thus, the objector must provide credible evidence that negates at least one of the allegations necessary for the claims legal sufficiency. *Id.* Finally if the objector does provide such evidence, the burden shifts back to the claimant to prove the validity of the claim by a preponderance of the evidence. *Id.* at 174. The burden of persuasion is always on the claimant.

In re: United Cos. Financial Corp., 267 B.R. 524, 527 (Bankr.S.D.Del. 2000). As noted by the Debtors, “[a] claimant’s proof of claim is entitled to the presumption of prima facie validity under Bankruptcy Rule 3001(f),” until an objecting party refutes at least one of the elements required to establish the sufficiency of the claim. (Third Omnibus Claims Objection at 12.)

***Background Facts Supporting the Validity of WorldWide’s Claim***

9. WorldWide is a large-volume importer, recycler, and seller of batteries and battery-related products. (Affidavit of David J. Petruzzi (“Petruzzi Aff.”) attached hereto as Exhibit B, at 1, ¶ 4.)

10. On or about March 16, 2004, WorldWide and Delphi Corporation entered a written Recycled Battery Sales Agreement (the “Agreement”), pursuant to which Delphi agreed to sell to WorldWide, and WorldWide agreed to purchase from Delphi, certain used lead-acid batteries that WorldWide could recondition and then sell as reconditioned batteries. The original term of the Agreement expires at midnight on June 30, 2008. (*Id.* at 2, ¶ 7; Exhibit A.)

11. Under the Agreement, Delphi regularly shipped trailer loads of batteries to the WorldWide facilities in Anderson, Indiana. (Petruzzi Aff. at 2, ¶ 10.) WorldWide would then sort the batteries, remove and retain those batteries that were deemed appropriate for reconditioning, and then replace the battery weight for those retained batteries with similar used lead-acid batteries. After WorldWide sorted the batteries, the remaining, non-recyclable

batteries were then shipped to a smelter in Indianapolis, Indiana, at Delphi's expense.

WorldWide paid Delphi for the batteries retained by WorldWide on a per pound basis. (Id., at 2, ¶ 14.)

12. For more than a year, the WorldWide and Delphi performed pursuant to and enjoyed the benefits of the Agreement. (Id., at 2, ¶ 16.) By partnering with WorldWide, Delphi secured a method of used battery disposal that permitted Delphi to generate revenue from otherwise non-productive used batteries. (Id., at 2, ¶ 18.) By partnering with Delphi, WorldWide secured a reliable and continuous source of a large volume of used batteries. (Id., at 2, ¶ 18.)

13. The Agreement included an option for Delphi to terminate the Agreement in the event of demonstrated "significant hardship" upon at least ninety (90) days prior written notice. (Exhibit A, Agreement at 4-5, §4.5.) This provision protected Delphi in the event of a bona fide significant business hardship, and protected WorldWide from a sudden and unexpected termination of the Agreement and corresponding battery supply. (Id.)

14. In early 2005, WorldWide was advised by Mr. Craig Kellogg of Delphi that Delphi was considering a sale of Delphi's battery related assets to Johnson Controls, Inc. ("JCI"), and that if such a transaction were consummated, the Agreement would be assigned to JCI. (Petruzzi Aff. at 3, ¶ 22.)

15. On June 30, 2005, JCI did purchase substantially all of Delphi's battery related assets. (Petruzzi Aff. at 4, ¶ 24.) After the closing on the transaction, Kellogg advised WorldWide that the Agreement had been assigned to JCI as a part of the transaction. (Id., at 4, ¶ 29.) Delphi never gave a 90-day written termination notice to WorldWide, based on undue hardship or otherwise. (Id., at 5, ¶ 31.)

16. JCI continued to make shipments of batteries to WorldWide through July of 2005. All battery shipments to WorldWide were abruptly discontinued in August of 2005, however, without any prior notice to WorldWide. JCI eventually refused to perform pursuant to the terms of the Agreement and disavowed any legal obligation to perform pursuant to the terms of the Agreement. (Petruzzi Aff. at 4, ¶¶ 26-27 & 30.)

17. On March 8, 2006, WorldWide filed suit against JCI, et al., under Cause No. 48C01-0603-PL-00297, in the Madison County Circuit Court, in the State of Indiana, asserting numerous claims, including claims for damages arising out of breach of the Agreement. (*Id.* at 5, ¶ 35.) The action was removed by the defendants to the United States District Court for the Southern District of Indiana, Indianapolis Division, Case No. 1:06-cv-0602-DFH-TAB. WorldWide then filed a motion to remand the action and, on July 7, 2006, the District Court issued an Order remanding the case to the Madison County Superior Court.

18. In responding to WorldWide's complaint, JCI has denied that the Agreement was assigned by Delphi to JCI as a part of the battery asset acquisition transaction, and has denied ever assuming any liabilities under the Agreement. (See, e.g., Defendants Johnson Controls, Inc. and Johnson Controls Battery Group, Inc.'s Joint Answer to Plaintiff's First Amended Complaint, attached hereto as Exhibit C, at 4, ¶ 16.) The parties to the JCI litigation are presently engaged in discovery.

19. To the extent that JCI never took an assignment of the Agreement from Delphi, Delphi remains liable to WorldWide under the terms and conditions of the Agreement.

#### *Estimation of Claim*

20. In responding to the Third Omnibus Claims Objection, claimants asserting contingent or unliquidated claims are required to state the amount the claimant believes would be

the allowable amount of such claim upon liquidation or the occurrence of the contingency, as applicable. (Notice of Objection to Claim at 3.)

21. The issue of whether the Agreement was assigned by Delphi to JCI has yet to be determined in any tribunal. To the extent that JCI did not take an assignment of the Agreement, as JCI has alleged, Delphi remains liable under the Agreement, and WorldWide's claim for lost profits is a valid claim against Delphi for with respect to lost profits accruing on and after July 1, 2005.

22. Accordingly, based on WorldWide's calculation of lost profits arising from breach of the Agreement and WorldWide's understanding that Delphi has not assumed the Agreement as part of these bankruptcy proceedings, WorldWide estimates that the maximum allowable amount of WorldWide's claim against Delphi is less than or equal to \$250,000.<sup>1</sup>

***Motion for Enlargement of Time  
to Submit Additional Evidence in Support of Proof of Claim***

23. Claimants filing responses to the Third Omnibus Claims Objection are direct to submit, together with their response, "all documentation or other evidence of the claim upon which [the claimant] will rely in opposing the Third Omnibus Objection to the extent not included with the proof of claim previously filed with the Bankruptcy Court." (Notice of Objection to Claim at 3.) Given the very generalized nature of the Debtors' statement of objection, however, it simply is not possible for WorldWide to identify all such documentation and evidence.

24. WorldWide's claim is listed among sixty-five (65) pages of allegedly Unsubstantiated Claims identified by the Debtors. (Third Omnibus Claims Objection, Exhibit C-

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<sup>1</sup> This estimation is made only for purposes of these bankruptcy proceedings with respect to WorldWide's Proof of Claim against Delphi. This estimation should not be construed as, and does not constitute, a statement of, estimation of, or limitation on (a) WorldWide's claims against JCI or any other party, or (b) claims that might be asserted outside of these bankruptcy proceedings against any party.

1.) With respect to these claims, the Debtors allege simply that the claims assert liabilities or dollar amounts that are not owing pursuant to the Debtors books and records. From this general allegation, WorldWide cannot possibly determine the basis for the Debtors' conclusion that the amounts claimed by WorldWide are not due and owing.

25. As is noted above, a claimant's proof of claim is entitled to a presumption of prima facie validity until an objecting party refutes at least one of the elements required to establish the sufficiency of the claim. The Debtors have yet to specifically identify one or more elements of WorldWide's claim the Debtors intend to refute, let alone submit any evidence negating an element of WorldWide's claim. Whether the Debtors intend to challenge the validity of the Agreement or the amount of the claim, or intend to assert that the Agreement was assigned to JCI on June 30, 2005, will dramatically impact the nature and extent of the evidence to be presented by WorldWide at any evidentiary hearing on the objection to the claim.

26. In addition, requiring the disclosure and filing in open Court of documents containing WorldWide's confidential information regarding costs, expenses, and profits associated with the Recycled Battery Sales Agreement at this juncture, in the absence of an appropriate protective order, would be manifestly unjust. It is not even clear whether Debtors even challenge WorldWide's statement of lost monthly profits.

27. WorldWide is therefore submitting with this response sufficient documentation to establish the basis for the Proof of Claim and the facts set forth in this response, and respectfully requests that the Court grant WorldWide an enlargement of time for filing additional documents and evidence in support of the claim based on an articulation of Delphi's specific objection to the claim. WorldWide is willing to establish with Debtors an agreed upon deadline and procedure

for the exchange and/or submission of such additional documents and evidence in advance of any hearing date set by the Court on WorldWide's claim and Debtors' objection thereto.

28. Debtors may deliver any reply to this response to the below-signed counsel for WorldWide, whose contact information is set forth below and in the Proof of Claim.

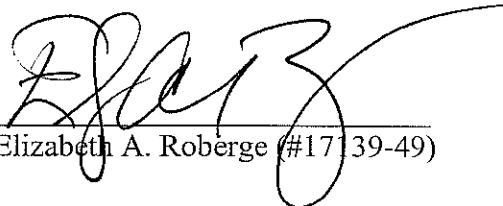
29. Counsel for WorldWide are the claimant's designated legal representatives for reconciling, settling, or resolving the claim.

30. For all the foregoing reasons, WorldWide respectfully requests that the Court deny the Debtors' request that WorldWide's claim be disallowed or expunged, accept WorldWide's statement of estimation of claim as set forth in this response, grant WorldWide an enlargement of time for the submission of additional documents and evidence in support of WorldWide's claim, and grant WorldWide such further relief as is just and proper in the premises.

Respectfully submitted,

ROBERGE & ROBERGE

By:



Elizabeth A. Roberge (#17139-49)

Christopher S. Roberge (#6413-98)  
Elizabeth A. Roberge (#17139-49)  
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**CERTIFICATE OF SERVICE**

The undersigned certifies that copies of the foregoing *WorldWide Battery's (I) Response in Opposition to Third Omnibus Claims Objection (Ref. Claim No. 2479), and (II) Motion for Enlargement of Time to Submit Additional Evidence in Support of Proof of Claim* are being served by third-party commercial carrier, this 22<sup>nd</sup> day of November, 2006, for delivery prior to 4:00 p.m. on November 24, 2006, on the following:

Clerk of the United States Bankruptcy Court  
for the Southern District of New York  
One Bowling Green  
New York, New York 10004

Simpson Thacher & Bartlett LLP  
Attn.: Kenneth S. Ziman  
425 Lexington Avenue  
New York, New York 10017

Honorable Robert D. Drain  
United State Bankruptcy Judge  
United States Bankruptcy Court  
for the Southern District of New York  
One Bowling Green  
Room 610  
New York, New York 10004

Davis Polk & Wardwell  
Attn.: Donald Bernstein & Brian Resnick  
450 Lexington Avenue  
New York, New York 10017  
Latham & Watkins, LLP  
Attn.: Robert J. Rosenberg & Mark A. Broude  
885 Third Avenue  
New York, New York 10022

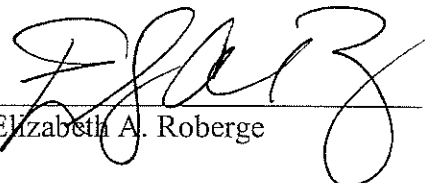
Delphi Corporation  
Attn.: General Counsel  
5725 Delphi Drive  
Troy, Michigan 48098

Fried, Frank, Harris, Shriver & Jacobson, LLP  
Attn.: Bonnie Steingart  
One New York Plaza  
New York, New York 10004

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Suite 2100  
Chicago, Illinois 60606

Office of the United States Trustee  
for Southern District of New York  
Attn.: Alicia M. Leonard  
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Suite 2100  
New York, New York 10004

ROBERGE & ROBERGE  
9190 Priority Way West Drive, Suite 100  
Indianapolis, Indiana 46240  
Telephone: (317) 818-5500  
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Elizabeth A. Roberge

UNITED STATES BANKRUPTCY COURT      Southern      DISTRICT OF      New York		<b>PROOF OF CLAIM</b>
Name of Debtor <p style="text-align: center;">Delphi Corporation</p>		Case Number <p style="text-align: center;">05-44481-rad</p>
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (The person or other entity to whom the debtor owes money or property): <p>Worldwide Battery Company, LLC</p>		<div style="border: 2px solid black; padding: 5px; text-align: center;"> <b>RECEIVE</b>  <b>APR 3 2006</b>  <small>U.S. BANKRUPTCY COURT SOUTHERN DISTRICT OF NEW YORK</small> </div> <p style="text-align: right; font-size: small;">THIS SPACE IS FOR COURT USE ONLY</p>
Name and address where notices should be sent: Roberge & Roberge 9190 Priority Way West Drive, Suite 100 Indianapolis, Indiana 46240 Telephone number: (317) 818-5500		
Account or other number by which creditor identifies debtor:		
Check here <input type="checkbox"/> replaces if this claim <input type="checkbox"/> amends a previously filed claim, dated: _____		
<b>1. Basis for Claim</b> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> Goods sold  <input type="checkbox"/> Services performed  <input type="checkbox"/> Money loaned  <input type="checkbox"/> Personal injury/wrongful death  <input type="checkbox"/> Taxes  <input checked="" type="checkbox"/> Other <u>Breach of contract</u> </div> <div style="width: 45%;"> <input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a)  <input type="checkbox"/> Wages, salaries, and compensation (fill out below)                      Last four digits of SS #: _____                      Unpaid compensation for services performed from _____ to _____  <div style="display: flex; justify-content: space-between; width: 100%;"> <span>(date)</span> <span>(date)</span> </div> </div> </div>		
<b>2. Date debt was incurred:</b> <p style="text-align: center;">8/1/2005</p>		<b>3. If court judgment, date obtained:</b>
<b>4. Total Amount of Claim at Time Case Filed:</b> \$ <u>2,819,166.35</u> (unsecured)      (secured)      (priority) <u>2,819,166.35</u> (Total) If all or part of your claim is secured or entitled to priority, also complete Item 5 or 7 below. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
<b>5. Secured Claim.</b> <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Collateral: \$ _____ Amount of arrearage and other charges <u>at time case filed</u> included in secured claim, if any: \$ _____		<b>7. Unsecured Priority Claim.</b> <input type="checkbox"/> Check this box if you have an unsecured priority claim Amount entitled to priority \$ _____ Specify the priority of the claim: <input type="checkbox"/> Wages, salaries, or commissions (up to \$4,925)* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Up to \$2,225* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6). <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____). <small>*Amounts are subject to adjustment on 4/1/07 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>
<b>6. Unsecured Nonpriority Claim \$</b> _____ <input type="checkbox"/> Check this box if: a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it, or if c) none or only part of your claim is entitled to priority.		
<b>8. Credits:</b> The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.		THIS SPACE IS FOR COURT USE ONLY
<b>9. Supporting Documents:</b> <i>Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.</i>		
<b>10. Date-Stamped Copy:</b> To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim		
Date <p>3/27/06</p>	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any): <p style="text-align: center;">EXHIBIT <u>A</u>                  Christopher S. Roberge, Esq. on behalf of Creditor</p>	

In re: Delphi Corporation  
Case No. 05-44481

**Calculations of debt owed to Worldwide Battery Company, LLC**

Contract included transactions from August, 2005, through the end of June, 2008, with an expected average income per month in the amount of \$80,547.61. Due to Delphi's breach of the contract, Worldwide Battery Company lost income of \$80,547.61 per month for 35 months.

\$	80,547.61	lost income per month
x	<u>35</u>	<u>total months</u>
	<b>\$2,819,166.35</b>	<b>total lost income</b>

RECYCLED BATTERY SALES AGREEMENT

COPY

This Agreement is entered into as of the 16<sup>th</sup> day of March, 2004 by and between:

Delphi Corporation, a Delaware corporation  
4800 South Saginaw Street  
Flint, Michigan 413501-1360  
("Delphi" or "Seller"), and:

Worldwide Battery Company, LLC  
538 Meridian St.  
Anderson, Indiana 46016  
("Worldwide" or "Buyer")

The purpose of this Agreement is to set forth the terms and conditions under which Delphi agrees to sell, and Buyer agrees to buy, the opportunity to sort and obtain certain recyclable lead-acid batteries that Buyer intends to recondition and sell as reconditioned batteries. As part of its reconditioning work, Buyer agrees to obliterate any trade name and other information on the batteries to be reconditioned in order to alleviate the potential for consumer confusion, and to affix its own proper identification and other appropriate information, including, as necessary, Proposition 65 and similar warnings, for battery sales in California and other states as required.

**1. Quantities, Title and Location(s)**

- 1.1 Batteries hereunder are those lead-acid starting, lighting and ignition batteries, and occasionally other similar batteries, which have been returned to one of Delphi's Battery Distribution Centers ("BDC") located in the United States. [This Agreement does **not** include or cover what are referred to as "bloms" or "blemished batteries."] Batteries from said Battery Distribution Center(s) identified in Exhibit 1, will be directed to Buyer's facility(ies), identified in Exhibit 2, in truckload quantities. Batteries to be directed to Buyer are influenced by many factors, including availability to Delphi and Buyer's ability to receive and process said quantities. The parties will communicate through their authorized representatives hereunder to establish periodic updated estimates of batteries available to Delphi, Buyer's needs, and delivery schedules. Delphi intends to provide 8 loads or more per week; however, market and business conditions can impact the number of loads available; therefore, no quantity is guaranteed by Delphi hereunder.
- 1.2 Buyer is solely responsible for handling and risk of loss associated with all batteries on its premises. Buyer has expertise surrounding such things as health and environmental considerations associated with handling of batteries, and agrees to take appropriate measures to assure employee health and environmental protection.
- 1.3 Batteries from Delphi's BDC listed in Exhibit 1 shall be shipped at Delphi's expense (rate shall not exceed established rates from the BDC to the designated smelter plus \$30 stop-off fee), via third party billing, to Buyer's facility identified in Exhibit 2. Additional expenses shall be invoiced to the Buyer and payment shall be as referenced in 2.2. Buyer may retain such batteries as it determines are reconditionable, replacing the battery weight retained with similar recyclable lead-acid batteries. Buyer will process batteries in a timely manner. The equivalent

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## RECYCLED BATTERY SALES AGREEMENT

truckload will be shipped at Seller's expense, to a smelter as identified in Exhibit 3. Any deviations to this provision are specified in Exhibit 4.

- 1.4 Shipping documents for said batteries (ref 1.3) shall contain a listing and approximate count and weight of the batteries shipped. Shipment weight shall be accurately determined through a certified scale weight, or other agreed method. This certified weight shall be accepted as the weight shipped from the BDC to Buyer.
- 1.5 Batteries loaded onto the truck will be loaded consistent with specifications applicable to loading of such materials.
- 1.6 Title and risk of loss for all batteries loaded onto any truck hereunder for transport from Delphi on behalf of Delphi shall remain with Delphi (or its designee) until such time as when the batteries arrive at Buyer's facility. Buyer shall assume risk of loss, but not title, when the batteries arrive at Buyer's facility. Risk of loss for all batteries shipped from Buyer's premises to Delphi's designated smelter or other facility, shall remain the Buyer's (or its designee or Delphi's designee) until such time as when the batteries arrive at Delphi's designated destination. At all times, Delphi will retain title to the batteries shipped except for those batteries recovered and exchanged by Seller for in kind, non-rechargeable scrap batteries.
- 1.7 Delphi and Buyer agree that the shipment weight as received by Delphi's smelter identified in Exhibit 3 shall be accepted by Delphi and Buyer as the basis for determining battery weight returned to Delphi.
- 1.8 If Buyer is in default or imminent default; if the contract terminates or if Delphi reasonably believes it necessary to limit risk for human health, safety or the environment, Delphi shall have the right to enter Buyer's facility and repossess Delphi's batteries.

## 2. Prices: Payment Terms; Records

- 2.1 The Buyer shall continue to compensate Delphi in the amount of \$0.0194/pound (i.e., \$873.00 for a full 45,000 pound truckload) as noted in Exhibit 5 for the remainder of calendar year 2004. The price per pound shall thereafter be established as follows: (a) Not later than November 15<sup>th</sup> in 2004 and in each subsequent year thereafter that this Agreement shall be in effect, the parties shall convene a meeting or meeting(s), either in person or by conference call, to consider and establish the price per pound for the following year based on the then-current market conditions. The parties thereafter shall continue their negotiations to the extent necessary in order to reach final agreement on and set the price per pound for the following calendar year on or before December 1<sup>st</sup> of the current calendar year; (b) In the event that the parties are not able to reach agreement on the price per pound for the following year pursuant to the terms of Section 2.1(a), supra, on or before December 1<sup>st</sup> of any given year, then in such event, the price per pound for the following calendar year shall be set based on an objective determination of the then prevailing market rate. Specifically, Seller

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## RECYCLED BATTERY SALES AGREEMENT

shall solicit bona fide quotes from third parties in the form of written price per pound bids based on the identical terms and conditions as are contained within this Agreement. The price per pound shall thereafter be established by averaging the price per pound bids obtained by Seller in all such bona fide quotes received by Seller; provided, however, that in no event shall any adjustment in price per pound pursuant to this Section 2.1(b) exceed a ten percent (10%) deviation from the then effective price per pound. Upon closing of the receipt of quotes by Seller, Buyer shall be provided with complete copies of all such bona fide quotes received by Seller.

- 2.2 On a monthly basis, or more frequently as agreed, Buyer will provide to Delphi a summary in form and detail outlined in Exhibit 6 which identifies the weight of batteries received by the Buyer during the period and the weight of batteries returned to Delphi's designated destination. The balance of battery weight due from Buyer to Delphi on the reporting date shall also be stated. Said summary shall be submitted by mail or email to the Delphi representative listed in Exhibit 7.
- 2.3 A copy of the summary in form (ref. 2.2) shall be mailed by Buyer to the Delphi representative listed in Exhibit 7.
- 2.4 Buyer will maintain adequate records consistent with generally accepted accounting principles, pertaining to its performance under this Agreement, including a daily log of recycled battery shipments received and dispatched listing at a minimum, the date, origin, destination, bill of lading number, certified weight, seal number and trucking company. Buyer will provide Delphi, upon reasonable request and during normal business hours, access to all relevant records for purpose of auditing battery receipts and reprocessing. Buyer will preserve its records for at least two years.

### 3. Reprocessing Operations; No Delphi Warranty

- 3.1 Buyer is solely responsible for its reprocessing operations. In those operations, it shall obliterate any trade name and other information on the batteries to be reconditioned in order to alleviate the potential for consumer confusion, and affix its own proper identification and other appropriate information to reprocessed batteries, including, as necessary, Proposition 65 and similar warnings, for battery sales in California and other states as required.
- 3.2 The batteries exchanged hereunder are generally considered to be scrap. They are exchanged AS IS, AND WITH ALL FAULTS AND WITHOUT WARRANTIES OF ANY KIND (EXCEPT TITLE), EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OR MERCHANTABILITY OR FITNESS FOR PURPOSE, AND DELPHI HEREBY DISCLAIMS AND BUYER HEREBY WAIVES ANY OBLIGATION, LIABILITY, RIGHT, CLAIM, OR DEMAND IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PATENT INFRINGEMENT, OR OTHERWISE WITH RESPECT THERETO. Without limiting the generality of the foregoing, Buyer acknowledges and agrees that (a) Delphi neither represents nor warrants that the batteries will operate satisfactorily or that any such batteries comply with any applicable federal, state, or local laws, regulations or ordinances or industry standards, (b)

C.S.L. D.P. Buyer Initials  
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A.B. Delphi Initials  
03/16/09

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## RECYCLED BATTERY SALES AGREEMENT

Buyer accepts the entire risk and responsibility of taking any necessary action to make the batteries comply with any applicable federal state, or local laws, regulations or ordinances or industry standards, and (c) Delphi shall have no liability or responsibility for the condition, operation and/or yield of the batteries after transfer to Buyer, its agents' representatives, and/or contractors.

### 4. Term; Termination

- 4.1 Unless earlier terminated, this Agreement shall remain in force through June 30, 2008 with the option to negotiate an additional two year contract.
- 4.2 In the event of significant default hereunder by one party, the other may provide written notice thereof following which this Agreement may be terminate immediately provided such default is not corrected within thirty business days. Failure of either party to provide notice of a default, whether or not significant, shall not constitute waiver of rights hereunder. A significant default shall include, but not be limited to, failure of Buyer to accept and purchase truckloads offered to Buyer, failure of Buyer to remain current in payments, insolvency of Buyer, filing of Bankruptcy petition by Buyer, indictment or conviction of Buyer or its principal officers of a felony criminal offense or any criminal offense involving theft, fraud or dishonesty or of a criminal environmental offense
- 4.3 Delphi shall have the right to terminate this Agreement should Worldwide or its division Eagle Battery, Inc., unreasonably and without good cause refuse to accept and purchase truck loads of recycled batteries offered to them coming from the Delphi Battery Distribution Centers located in Bolingbrook, Illinois and Plainfield, Indiana. Good cause to refuse to accept delivery shall not be deemed to be mere financial convenience or inconvenience for the Buyer. The Buyer recognizes and acknowledges that as Delphi is willing to provide all available loads from the Bolingbrook and Plainfield Battery Distribution Centers that are routed to the RSR smelter in Indianapolis, that Delphi is at risk of lost of revenue should Buyer fail to accept and purchase the offered loads available to Buyer. As part of the exclusive arrangement called for in this Agreement on behalf of Buyer in regard to truck loads of recycled batteries, Buyer agrees to accept all truck loads from Bolingbrook and Plainfield Battery Distribution Centers.
- 4.4 In the event Buyer can show that this Agreement has become a significant hardship to its business, Buyer may terminate this Agreement by providing written notice to Seller not less than (90) days in advance.
- 4.5 In the event that Delphi can show that this Agreement has become a significant hardship to its business, Delphi may terminate this Agreement by providing written notice to Buyer not less than (90) days in advance. A significant hardship for Delphi shall be deemed to include, but not be limited to: the closure or unavailability of the RSR smelter in the Indianapolis area thus necessitating use of another smelter that is not geographically aligned with the present transportation route; business, economic, environmental or potential legal liability circumstances cause Delphi to utilize a different smelter location that is not geographically aligned with Worldwide's location in Anderson, Indiana; the closure of either or both of the Battery Distribution Centers (that is the Bolingbrook or Plainfield Centers); Delphi loses the Wal-Mart as a customer or

C.S.L.  
2/19/04

D.P.

03/19/04

Buyer Initials

Page 4

A.B.

Delphi Initials

03/16/04

03/16/04

## RECYCLED BATTERY SALES AGREEMENT

other significant customer that materially affects or will materially affect the volume of recycled batteries or their quality; and, Delphi decides to sell or close its battery manufacturing operations or Delphi otherwise ceases to be involved in battery manufacturing.

- 4.6 In the event the Buyer refuses delivery of any batteries, Delphi shall have the option to transfer the shipment. The Buyer shall communicate delivery schedules every Wednesday by 4:30 p.m. (Indianapolis time) of subsequent week deliveries. Maximum quantity desired, company name, address, contact name, and telephone number must be included.

### 5. Buyers Compliance with Laws; Indemnification

- 5.1 Buyer, its employees, agents, representatives, and contractors, shall comply with all applicable federal, state, and local laws, regulations and ordinances. Buyer acknowledges that its battery reprocessing operations involve work with materials which are considered hazardous, and agrees to defend, indemnify and hold Delphi and its officers, directors, and employees harmless from any and all claims made against them arising out of transport or disposal of batteries delivered by Delphi hereunder, or Buyer's failure to comply with federal, state or local laws, regulations or ordinances applicable to hazardous waste.
- 5.2 Buyer agrees to defend, indemnify and hold Delphi and its officers, directors, and employees harmless from any and all claims made against them arising from the reconditioning, sale, or re-use of the batteries.

### 6. Insurance

- 6.1 During the term of this Agreement, Buyer shall obtain and maintain at least the insurance as specified in Exhibit B, and furnish certificate(s) of insurance therefore to Delphi.
- 6.2 All contracts of insurance shall provide 30 days prior written notice of cancellation, non-renewal and/or modification to Delphi as an "additional insured." All contracts of insurance shall be underwritten by an insurance company acceptable to Delphi.

### 7. General Terms

- 7.1 Waiver of Terms and Conditions: No waiver by either party of any breach of any of the terms or conditions herein contained to be performed by the other party shall be construed as a waiver of any subsequent breach, whether of the same or of any other term or condition hereof.
- 7.2 Arm's Length Agreement: The relationship of the parties hereunder is that of individual contracting parties and neither Delphi nor Buyer, nor any of their directors, officers, agents, servants or employees, is or shall be or become the agent or employee of the other party for any purpose in connection with the performance hereof.

C.S.K.  
2/10/04

DL  
03/19/04

Buyer Initials

Page 5

DL  
03/16/04  
Delphi Initials

DL  
03/16/04



## RECYCLED BATTERY SALES AGREEMENT

- 7.3 Choice of Law: This Agreement and the execution thereof shall be governed by the laws of the State of Michigan, and the substantive laws (but not the law of conflict of laws) of such state shall govern the validity, construction, enforcement, performance and interpretation of this Agreement.
- 7.4 Severability: If any provision of this Agreement shall be invalid, illegal or unenforceable under any law applicable thereto, such provision shall be deemed deleted from this Agreement without impairing or prejudicing the validity, legality and enforceability of the remaining provisions hereof.
- 7.5 Any delay or failure of either party to perform its obligations hereunder shall be excused if, and to the extent that it is caused by an event or occurrence beyond the reasonable control of the party and without its fault or negligence, such a by way of example and not by way of limitation, acts of God, actions by any governmental authority (whether valid or invalid), fires, floods, windstorms, explosions, riots, natural disasters, wars, sabotage, labor problems (including lockouts, strikes and slowdowns), inability to obtain fuel, power, material, labor, equipment or transportation, or court injunction or order; provided that written notice of such delay (including the anticipated duration of the delay) shall be given by the affected party to the other party within 10 days.
- 7.6 Any notice which either party may be required or desires to give to the other party hereunder shall be deemed to be fully given when delivered in person or sent via fax and first class mail, postage prepaid, to the other party at the addresses listed in Exhibit 7, or at any other address subsequently designated by such party in written.
- 7.7 Entire Agreement: This Agreement contains all of the representations and agreements of and between the parties hereto with respect to the subject matter hereof and shall not be amended or modified except by a written instrument duly executed by both parties. This Agreement replaces and supercedes the original Recycled Battery Sales Agreement dated January 24, 2003, by and between Delphi and Eagle Battery, Inc., which original Agreement shall be of no further force or effect upon execution of this Agreement.
- 7.8 Assignment: This assignment shall be binding upon and continue to the benefit of the parties hereto and their respective successors and assigns. Any assignment of the Agreement or any of the rights or obligations of either party hereunder to any other person, firm or corporation whatsoever, whether by merger or operation of law or otherwise, without the prior written consent of the other, shall be void.
- 7.9 No Third Party Beneficiary Intended: This contract is not intended to convey third party beneficiary rights.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

Buyer: Worldwide Battery Company, LLC

Seller: Delphi Corporation

C.S.A.  
3/19/04

D.P.  
03/19/04 Buyer Initials

Page 6

A.B.  
03/16/04 Delphi Initials

RECYCLED BATTERY SALES AGREEMENT

By: Dave Petrucci

Printed Name: Dave Petrucci

Title: Pres.

By: Alfred L. Brunner

Printed Name: ALFRED L. BRUNNER

Title: NORTH AMERICA  
BATTERY MARKETING  
MANAGER

C.S.A.  
11/11/04

DP  
03/19/04 Buyer Initials

Page 7

R.B.  
03/16/04 Delphi Initials

03/16/04

RECYCLED BATTERY SALES AGREEMENT

EXHIBIT 1 — Delphi Battery Distribution Centers

Delphi Battery Distribution Center(s) ("BDC(s)") from which batteries will be shipped, as referenced in 1.1.

Worldwide shall have exclusive rights(s) and opportunity(ies) to sort, obtain, and/or buy the recyclable lead-acid batteries that are the subject of this Agreement from Delphi's BDC's located in:

Bolingbrook, Illinois  
Plainfield, Indiana

Worldwide also shall have the non-exclusive right(s) and opportunity(ies) to sort, obtain, and/or buy lead-acid batteries that are the subject of this Agreement, and the right to bid to make such rights exclusive, with respect to the following Delphi BDC:

Delta, Ohio

C.S.L.  
11/21/11

DP  
03/01/04

Buyer Initials

Delphi Initials  
03/16/04

03/03/04

RECYCLED BATTERY SALES AGREEMENT

EXHIBIT 2— Buyer's Facilities

Buyer's facilities to which Delphi shall send batteries, referenced in 1.1.

Company Name	Worldwide Battery Company, LLC	
Contact Name 1	Randy Batt	
Contact Name 2	John Carter	
Address Line 1	538 Meridian Street	
Address Line 2		
City	Anderson	
State	Indiana	
Zip Code	46016	
Phone Number	765-643-4001	
Fax Number	765-643-5001	
Cell Phone		
E-mail		

C.S.K. DP  
1-1-11 03/19/09 \_\_\_\_\_ Buyer Initials

A.B. Delphi Initials  
03/16/09

CE  
03/16/09

RECYCLED BATTERY SALES AGREEMENT

EXHIBIT 3— Delphi's Designated Smelter

Delphi's designated smelter or other facility to which Buyer shall return batteries, as referenced in 1.3.

RSR — Quemetco, Inc.  
7870 W. Morris St.  
Indianapolis, IN 46241

C.S.R. DP  
03/14/07 Buyer Initials

A.B.  
03/16/07 Delphi Initials

03/17/07

RECYCLED BATTERY SALES AGREEMENT

EXHIBIT 4— Deviations to 1.3

As referenced in 1.3, the following deviations apply.

Batteries transported from remote domicile locations to Buyer's facilities in Exhibit 2 shall be at Buyer's expense. Batteries transported from Buyer's facilities in Exhibit 2 to the smelter listed in Exhibit 3 shall be at Delphi's expense, via third party billing.

C.S.R.  
-1. a/c  
DP  
03/19/04  
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Buyer Initials

A.B.  
03/16/04  
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Delphi Initials

RECYCLED BATTERY SALES AGREEMENT

EXHIBIT 5— Buyer Compensation to Delphi

As referenced in 2.1, Buyer will compensate Delphi per truckload of junk shipped as is for all shipments received.

3/19/04 DP  
03/19/04 \_\_\_\_\_ Buyer Initials

H.B.  
03/16/04 \_\_\_\_\_ Delphi Initials

CR  
03/07

RECYCLED BATTERY SALES AGREEMENT

EXHIBIT 6

**SUBSTITUTE CORRECT PAGE!!!**

C.S.R. DP 03/19/04 \_\_\_\_\_ Buyer Initials

A.B. Delphi Initials  
03/16/04



## RECYCLED BATTERY SALES AGREEMENT

### EXHIBIT 7— Addresses for Notice

As referenced in 2.2, 2.3, and 7.6, addresses for notice are below.

	Delphi	Buyer
Company Name	Delphi Corporation	Worldwide Battery Company, LLC
Contact Name 1	James Crawford	Neil Schneider
Contact Name 2		
Address Line 1	Mail Code 39-1008	538 Meridian Street
Address Line 2	8750 Hague Road P.O. Box 502650	
City	Indianapolis	Anderson
State	IN	IN
Zip Code	46250	46016
Phone Number	317-579-3401	765-643-4001
Fax Number	317-579-3411	765-643-5001
Cell Phone		
E-mail		neil@worldwidebattery.com

C.S.R. *DL*  
03/19/04 \_\_\_\_\_ Buyer Initials

*A.B.*  
03/16/04 \_\_\_\_\_ Delphi Initials

RECYCLED BATTERY SALES AGREEMENT

EXHIBIT 8— Insurance Requirements

As referenced in 6.1, the following insurance shall be obtained and maintained by Buyer for the term of this Agreement.

<u>Coverage</u>	<u>Limits</u>
Comprehensive General Liability Including E Form Contractual Liability coverage	\$2,000,000 per occurrence combined single limit for Personal Injury and Property Damage
Automobile Liability covering all Owned, hired and non-owned vehicles	\$1,000,000 per occurrence combined single limit for Personal Injury and Property Damage
Worker's Compensation	Statutory for all states of operation
Employers Liability	\$250,000 each accident disease policy limit/\$250,000 disease each employee

S.A.  
3/19/04

D.P.  
03/19/04

\_\_\_\_ Buyer Initials

D.B. Delphi Initials  
03/16/04

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

----- X  
In re:

DELPHI CORPORATION, *et al.*,

Debtors.  
----- X

:  
:  
: Chapter 11

:  
: Case No. 05-44481 (RDD)

:  
: (Jointly Administered)

**AFFIDAVIT OF DAVID J. PETRUZZI**

I, David J. Petruzzi, being first duly sworn upon my oath, state as follows:

1. I am over the age of eighteen (18) years of age, I am competent to testify to and have personal knowledge of, the facts and matters contained in this affidavit, and to the best of my knowledge and recollection, the following representations are true.
2. I am the President of Petruzzi Holdings, Inc., the sole member of WorldWide Battery Company, LLC ("WorldWide"), located in Anderson, Indiana.
3. My business address is 538 Meridian Street, Anderson, Indiana 46016-1517. My business telephone number at that location is (765) 643-4001.
4. WorldWide is a large-volume importer, recycler, and seller of batteries and battery-related products.
5. WorldWide was formed as an Indiana limited liability company in February of 2001. I have worked in the battery business for approximately nineteen (19) years.
6. On or about March 16, 2004, WorldWide and Delphi Corporation ("Delphi") entered a written Recycled Battery Sales Agreement (the "Agreement"). A true and correct copy of the Agreement is attached to WorldWide's Proof of Claim filed in the Delphi bankruptcy.

EXHIBIT

B

7. Pursuant to the terms of the Agreement, Delphi agreed to sell to WorldWide, and WorldWide agreed to purchase from Delphi, certain used lead-acid batteries that WorldWide could recondition and then sell as reconditioned batteries. The term of the Agreement expires at midnight on June 30, 2008, with an option to negotiate a two (2) year continuation of the Agreement.

8. Such batteries, prior to reconditioning, are commonly referred to in the battery industry as "junks."

9. The Agreement included an option for Delphi to terminate the Agreement in the event of demonstrated "significant hardship" upon at least ninety (90) days written notice. This provision protected Delphi in the event of a bona fide significant business hardship, and protected WorldWide from a sudden and unexpected termination of the Agreement and corresponding battery supply.

10. Pursuant to the terms of the Agreement, Delphi regularly shipped trailer loads of batteries to the WorldWide facilities in Anderson, Indiana.

11. WorldWide would then sort the batteries, remove and retain those batteries that were deemed appropriate for reconditioning, and then replace the battery weight for those retained batteries with similar used lead-acid batteries.

14. After WorldWide sorted the batteries received from Delphi, the remaining, non-recyclable batteries were then shipped to a smelter in Indianapolis, Indiana, at Delphi's expense.

15. WorldWide paid Delphi for the batteries retained by WorldWide on a per pound basis, with a provision in the Agreement for annual adjustments to the price per pound.

16. For more than a year, the parties performed pursuant to the terms of the Agreement without incident. Attached hereto collectively as Exhibit 1 are true and correct

copies of a few of the bills of lading and truck weights from June 2005 associated with the program.

17. The recycled battery program which was the subject of the Agreement was a “win” for all parties concerned.

18. By partnering with Delphi, WorldWide secured a reliable and continuous source of a large volume of used batteries. By partnering with WorldWide, Delphi secured a method of used battery disposal that permitted Delphi to generate revenue from otherwise non-productive used batteries. And, not insignificantly, the public benefited through the recycling of the used batteries which otherwise would have been sent to a smelter or discarded prior to consumption of their remaining useful life.

19. On March 30, 2005, John Carter of WorldWide and I met with Craig Kellogg (“Kellogg”) of Delphi, who supervised the battery program under the Agreement for Delphi.

20. During that meeting, Kellogg urged WorldWide to expand the battery program to other geographical areas including, without limitation, to Richmond, Virginia.

21. After that meeting, at the very end of March or early April 2005, Kellogg called me to tell me that Delphi had signed a letter of intent with Johnson Controls for the possible acquisition by Johnson Controls of Delphi’s battery related assets. Kellogg told me that we were the first people he called to share this news.

22. When I asked Kellogg what impact this might have on the battery program, Kellogg informed me that it was not certain whether the proposed acquisition actually would take place, and that if the acquisition did occur, the Agreement was being assigned to Johnson Controls as a part of the transaction, but Kellogg could not assure that the Richmond, Virginia expansion would be assigned to Johnson Controls.

23. In response to Delphi's urgings, WorldWide did expand the battery program into Richmond, Virginia, with the understanding that if the Johnson Controls acquisition did take place, the future of that branch of the program was not certain. Regular shipments of batteries continued from Delphi, and the parties continued to enjoy a successful and profitable battery program.

24. On or around June 30, 2005, Johnson Controls purchased substantially all of Delphi's battery related assets.

25. After the closing on the asset acquisition, Kellogg informed me that the Agreement had been assigned to Johnson Controls as a part of the transaction.

26. Johnson Controls continued to make battery shipments to WorldWide such as those that had been made by Delphi, and WorldWide continued to remit the price per pound required by the Agreement.

27. The battery shipments by Johnson Controls continued through the month of July and through the majority of August 2005; specifically, to and including August 29, 2005.

28. Suddenly, and without any prior notice to WorldWide, however, the battery shipments stopped.

29. Representatives of WorldWide met with representatives of Johnson Controls in early September 2005. Johnson Controls apologized for discontinuing the shipments, claimed to be unaware of its obligations under the Agreement, and assured WorldWide that the shipments would be resumed.

30. Johnson Controls then made several shipments in the month of September, but the shipments again abruptly stopped without any prior notice or explanation to WorldWide.

31. Neither Delphi nor Johnson Controls ever issued a ninety (90) day termination letter to WorldWide or otherwise claimed significant hardship from continued performance under the Agreement.

32. WorldWide attempted to work cooperatively with Johnson Controls toward resumption of the battery program. Johnson Controls refused to comply with the terms of the Agreement, however, and denied that it had any obligation to WorldWide under the Agreement.

33. The termination of the battery program has had a profound effect on WorldWide's operations including, without limitation, the forced layoff of two (2) upper level management personnel and six (6) hourly employees, as well as substantial and ongoing loss of revenue.

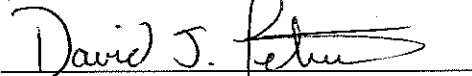
34. WorldWide's average monthly profits from the battery program had been over \$80,700.

35. On March 8, 2006, WorldWide filed suit against Johnson Controls and several other individual and corporate defendants in the Madison County Superior Court, under Cause No. 48C01-0603-PL-00297. In response to WorldWide's claims against Johnson Controls for breach of the Agreement, Johnson Controls has denied that it ever took an assignment of the Agreement.

Further, the affiant saith not.

**VERIFICATION**

I affirm, under the penalties for perjury, that the foregoing representations are true.

  
David J. Petruzzi

STATE OF INDIANA            )  
  ) SS:  
COUNTY OF Manion        )

Before me, the undersigned Notary Public in and for the State of Indiana, personally appeared **David J. Petruzzi**, who having been duly sworn upon his oath, executed the foregoing Affidavit as his free act and deed, and stated that the facts contained therein are true.

Dated this 22 day of November, 2006.

Stephanie Lalani  
Notary Public                   #513719  
Stephanie Lalani  
Printed

My Commission Expires: 1/28/2010

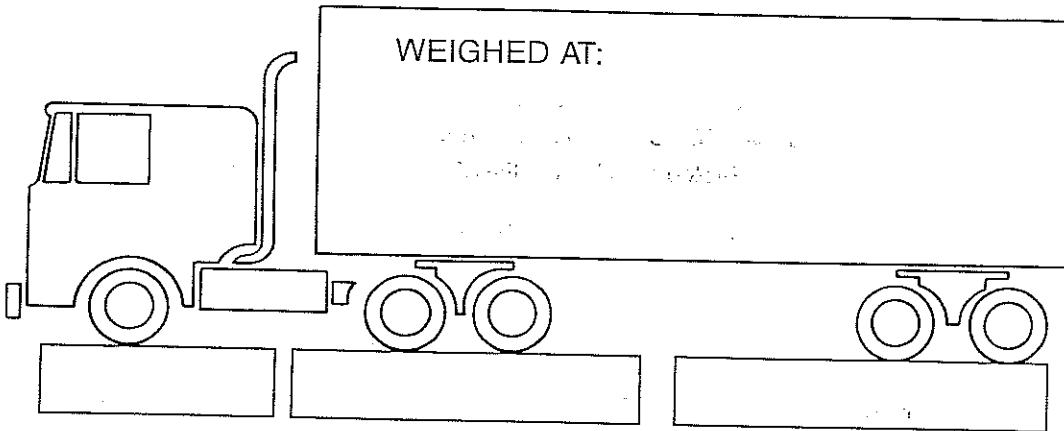
My County of Residence: Manion



# FLYING J TRAVEL PLAZA



## J-SCALE-GUARANTEED WEIGHT

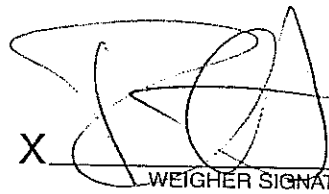


GUARAN



Our Seal Means  
"GUARANTEE"

COMMODITY

X   
WEIGHER SIGNATURE

EXHIBIT

1

WW/JC

SHIP FROM:		Ship Date	STRAIGHT BILL OF LADING			
Delphi Prod & Svc Solutions		5/27/2005	Short Form	Original Not-Negotiable		
471 Quadrangle Dr.		SEAL #1	Subject to Section 7 of conditions, of applicable Bill of Lading, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement: The carrier shall not make delivery of the shipment without payment of freight and all other lawful charges.  DELPHI AUTOMOTIVE Car (Signature of Consignor)			
Bolingbrook IL 60440		8898				
(800) 628-7020		SEAL #2				
SHIP TO:		0				
Worldwide Battery		SEAL #3	It charges are to be prepaid, write or stamp here, "To Be Prepaid." TO BE PREPAID			
300 Meridian		0				
Anderson IN 46016		SEAL #4				
		0				
BOL No.	Truck No.	Carrier Name	Carrier SCAC Code	Carrier PRO NO.		
6255	5327	MM Tracking	MM	Bill Vandiver		
Pallets	HM	Description Instructions			Items	Weight
18	x	Batteries, wet, filled with acid, B (Corrosive Material), UN 2794, PG III; Emergency Response Guide #154 - Batteries, Electric Storage, Assembled, N.O.I., Value Not To Exceed \$2.00 per pound. (NMFC 11. 60720-2)			1153	412681b
		Scrap Lead (Wheel weights)			0	0lb
TOTALS :					1153	412681b

This is to certify, that the above named materials are properly classified, described, packaged, marked and labeled and are in proper condition for transportation according to the applicable regulations of the Department of Transportation.

(Signed)

*Leobardo R. Hernandez*

3rd Party Prepaid

DELPHI E&O - Cisco Code 35037

C/O Data2Logistics

42 Thomas Patten Dr.

Randolph, MA 02368

Per

(HM) - Mark with 'X' to designate hazardous materials as defined in the Dept. of Trans. regulations governing transportation of hazardous materials. (The use of the column is a method of designating hazardous materials on Bill of Lading per sec 172.301 and 172.202b; of the regulations governing

WW/JC

00004

99284182

THE CAT SCALE GUARANTEE

**CAT SCALE  
COLLECTOR  
CARD  
INSIDE**

TICKET NUMBER



The CAT Scale Company guarantees that our scales will give an accurate weight. What makes us different from other scale companies is that we back up our guarantee with cash.®

**"WEIGH WHAT WE SAY OR WE PAY"®**

If you get an overweight fine from the state AFTER one of our CAT Scales showed a legal weight, we will immediately check our scale and we will:

- (1) Reimburse you for the cost of the overweight fine if our scale is wrong, OR
- (2) A representative of CAT Scale Company will appear in court WITH the driver as an expert witness if we believe our scale was correct.

**IF YOU SHOULD GET AN OVERWEIGHT FINE, YOU SHOULD DO THE FOLLOWING TO GET THE PROBLEM RESOLVED:**

- 1) Post bond and request a court date.
- 2) Call CAT Scale Company direct 24 hours a day at 1-877-CAT-SCALE (Toll Free).
- 3) IMMEDIATELY send a copy of the citation, CAT Scale Ticket, your name, company, address, and phone number to CAT Scale Company Attn: Operations Manager.

\* The four weights shown below are separate weights. The GROSS WEIGHT is the CERTIFIED WEIGHT and was weighed on a full length platform scale.

CAT SCALE COMPANY  
P.O. BOX 630  
WALCOTT, IA 52773  
(563) 284-6263  
www.catscale.com



PUBLIC WEIGHMASTER'S  
CERTIFICATE OF  
WEIGHT & MEASURE

DATE:

5-31-2005

STEER AXLE

11240 1b

SCALE

408

DRIVE AXLE

31660 1b

LOCATION:

PILOT 362

TRAILER AXLE

28620 1b

I 69 EXIT 14

\* GROSS WEIGHT

71520 1b

FORTVILLE IN

IMPRINT SEAL HERE  
(IF APPLICABLE)

This is to certify that the following described merchandise was weighed, counted, or measured by a public or deputy weighmaster, and when properly signed and sealed shall be prima facie evidence of the accuracy of the weight shown as prescribed by law.

LIVESTOCK, PRODUCE, PROPERTY, COMMODITY, OR ARTICLE WEIGHED

**FREIGHT ALL KINDS**

COMPANY

S AND S

TRACTOR #

824

TRAILER #

5316

WEIGH NUMBER

4182

FEE

8.00

WEIGHMASTER OR  
WEIGHER SIGNATURE

KRISTINA DICK

FULL WEIGH  
TICKET #  
(IF REWEIGH)

DRIVER IN TRUCK UNLESS CHECKED HERE:

© 1998 CAT Scale Company®

CUSTOMER COPY

Straight Bill of Lading  
 Short Form Original Not-Negotiable

TO: Ryder Integrated Logistics

SHIP FROM: INDY X-DOCK  
 2379 HADLEY RD.  
 PLAINFIELD, IN 46168  
 1-317-839-8400  
 CONTACT: JERRY FARNHAM

AGENT FOR SHIPPER BELOW:  
 SHIP TO: WORLDWIDE BATTERY  
 516 MERIDIAN  
 ANDERSON, IN 46016  
 1-765-643-4001  
 CONTACT: RANDY BATT

Subject to Section 7 of condition, of applicable Bill of Lading, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement.

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.  
 Ryder Integrated Logistics

Per \_\_\_\_\_ (Signature of Consignor)

If charges are to be prepaid  
 Write or stamp here "To Be Prepaid" To Be Prepaid

WHSE. E/L NO.	SHIPPER'S REF NO.
SHIP DATE 5-31-05	SHIPPER'S WHSE NO. 896
RECEIVED DATE	CUSTOMER CODE

DATE: 5/31/05	CARRIER SCAC CODE: HCSM	VEHICLE NO.: 5316	CARRIER PRO NO.
CUSTOMER P.O. NO.: SCRAP BATTERIES	DELIVERY RECEIPT NO.: SCRAP BATTERIES		

NUMBER OF PACKAGES	W HM	DESCRIPTION OF INSTRUCTIONS	WEIGHT (SUB TO CORR.)	PART NUMBER	NMFC ITEM NUMBER	CLASS	LINE NUMBER	CHECK COLUMN
18	X	BATTERIES, wet, filled with acid 8, (corrosive material) UN 2794, PG III Emergency Response Guide #154 Batteries, Electric Storage, Assembled, N.O.I., Value Not To Exceed \$2.00 Per Pound. (NMFC IT. 60720-2)	40,000					
		Batteries, Electric storage, Assembled, N.O.I., Value Not To Exceed \$2.00 Per Pound (NMFC IT. 60720-2)						
		Battery boxes, Plastic, N.O.I. (In Boxes Or Wrapped And Secured To Pallets) (NMFC IT. 60740)						
		Battery Covers Or Vents, Plastic, N.O.I. (In Boxes) (NMFC IT. 60800)				SEAL #		
		Battery Insulating Partitions, Plastic (In Boxes) (NMFC IT. 60640)				Make Delivery Appointment	YES NO	
		Battery Parts, Lead, N.O.I. (NMFC IT. 60830)						
		Battery Plates, Lead (NMFC IT. 60720)						
		Boxes, Fibre Board, Corrugated, K.D. Flat (NMFC IT. 49175)						
18	X	← TOTAL →	40,000					

This is an Interstate Shipment Under the Uniform Hazardous Materials Regulations.

I certify that the above named materials are properly classified, packaged, marked and labeled and are in proper condition for transportation in accordance with applicable regulations of the Department of Transportation.

Signature: *Matt [Signature]*

Press Hard You Are Making 4 Copies

FOR THE ACCOUNT OF (SHIPPER)  
 Delphi E & C - Cisco 35037  
 c/o Data2Logistics  
 42 Thomas Patten Dr.  
 Randolph, MA 02368

SEND FREIGHT BILL TO:  
 Delphi E & C - Cisco 35037  
 c/o Data2Logistics  
 42 Thomas Patten Dr.  
 Randolph, MA 02368

WW/JCI

000043

5-31-05

Carrier: Above Shipper's Ref. And Whse. E/L No. Must Appear On All Freight Bills.

Signature: *Matt [Signature]* per *Ryder*

Permanent P.O. address of shipper, Delphi Energy & Engine Management Systems Agent  
 Mark with "X" to designate hazardous materials as defined in the Dept. of Transportation regulations governing transportation of hazardous materials. The use of the column is an optional method of designating hazardous materials on Bills of Lading.

**STRAIGHT BILL OF LADING—SHORT FORM—ORIGINAL—NOT NEGOTIABLE**

RECEIVED, subject to the classifications and lawfully filed tariffs in effect on the date of issue of this Bill of Lading.

DESIGNATE WITH AN (X)  
**BY TRUCK** ☐ **FREIGHT** ☐

The property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said carrier (the word carrier being understood throughout this bill of lading as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its route, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the terms and conditions of the Uniform Domestic Straight Bill of Lading set forth (1) in Uniform Freight Classification in effect on the date hereof, if this is a rail or a rail-water shipment, or (2) in the applicable motor carrier classification or tariff if this is a motor carrier shipment. Shipper hereby certifies that he is familiar with all the terms and conditions of the said bill of lading, set forth in the classification or tariff which governs the transportation of this shipment, and the said terms and conditions are hereby agreed to by the shipper and accepted for himself and his assigns.

From **EAGLE BATTERY, INC.**  
At **538 Meridian Street**  
**Anderson, Indiana 46016**

DATE **6-1-05** SHIPPER'S NO. **E 6800**

CARRIER **S S Trucking** CARRIER'S NO.

CONSIGNEE  
AND  
DESTINATION

**PSR Delphi**  
**7870 W. Morris**  
**Indianapolis, IN 46231**

BY **S S Trucking**

ROUTE DELIVERING CARRIER

CAR OR VEHICLE  
INITIALS & NO.

NO. PACKAGES	HM	DESCRIPTION OF ARTICLES, SPECIAL MARKS AND EXCEPTIONS	ERG	*WEIGHT (SUBJECT TO CORR.)	CLASS OR RATE	✓	
<b>17</b>		<b>skids of scrap batteries</b>		<b>48.150</b>			
		<b>truck # 824</b>					
		<b>trailer # 5316-5317</b>					
		<b>bol # 896-P</b>					
		<b>Batteries, Wet Filled With Acid, Electric Storage 8, UN 2794, 111, Corrosive</b>					
		<b>Emergency Response: CHEMTREC (800) 424-9300</b>					

PLACARDS SUPPLIED ☐ YES ☐ NO DRIVER'S SIGNATURE EMER. (ENC) RESPONSE PHONE NO.

Subject to Section 7 of Conditions of Carriage, the carrier shall be delivered to the consignee without recourse on the consignor, the consignee shall sign the following statement.

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

Per (Signature of Consignor)

If charges are to be prepaid, write stamp here, "To be Prepaid."

Received \$ to apply in prepayment of the charges on the property described hereon.

Agent or Cashier

Per (The signature here acknowledges only the amount prepaid).

Charges Advanced:

\$

C.O.D. SHIPMENT

C.O.D. Amt

Collection Fee

Total Charges

SHIPPER'S CERTIFICATION: This is to certify that the above-named materials are properly classified, described, packaged, marked and labeled, and are in proper condition for transportation according to the applicable regulations of the Department of Transportation.

SIGNATURE TITLE

\* If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight".

† Shipper's Imprints in lieu of stamp; not a part of Bill of Lading approved by the Interstate Commerce Commission.

Note - Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding

THIS SHIPMENT IS CORRECTLY DESCRIBED.

† The fibre boxes used for this shipment conform to the specifications set forth in the box makers certificate thereon, and all other requirements of the Consolidated Freight Classification.

CORRECT WEIGHT IS LBS.

Per Shipper

**EAGLE BATTERY INC.**

**(765) 643-4001**

**538 Meridian St. Anderson, Indiana 46016**

Shipper, Per **John, C**

**6-1-05**

Agent, Per

**J. Pason**

Permanent post-office address of shipper

93284210

Doc 5864 Filed 11/27/06 Entered 11/28/06 12:46:14 Main Doc

The CAT Scale Company guarantees that our scales will give an accurate weight. What makes us different from other scale companies is that we back up our guarantee with cash.<sup>®</sup>

TICKET NUMBER



# CERTIFIED AUTOMATED TRUCK SCALE

CAT SCALE COMPANY  
P.O. BOX 630  
WALCOTT, IA 52773  
(563) 284-6263  
www.catscale.com



PUBLIC WEIGHMASTER'S  
CERTIFICATE OF  
WEIGHT & MEASURE

IMPRINT SEAL HERE  
(IF APPLICABLE)

WEIGH NUMBER  
4210

CUSTOMER COPY

Doc 5864 Filed 11/27/06 Entered 11/28/06 12:46:14 Main Doc

The CAT Scale Company guarantees that our scales will give an accurate weight. What makes us different from other scale companies is that we back up our guarantee with cash.<sup>®</sup>

## "WEIGH WHAT WE SAY OR WE PAY"<sup>®</sup>

If you get an overweight fine from the state AFTER one of our CAT Scales showed a legal weight, we will immediately check our scale and we will:

- (1) Reimburse you for the cost of the overweight fine if our scale is wrong, OR
- (2) A representative of CAT Scale Company will appear in court WITH the driver as an expert witness if we believe our scale was correct.

IF YOU SHOULD GET AN OVERWEIGHT FINE, YOU SHOULD DO THE FOLLOWING TO GET THE PROBLEM RESOLVED:

- 1) Post bond and request a court date.
- 2) Call CAT Scale Company direct 24 hours a day at 1-877-CAT-SCALE (Toll Free).
- 3) IMMEDIATELY send a copy of the citation, CAT Scale Ticket, your name, company, address, and phone number to CAT Scale Company Attn: Operations Manager.

\*The four weights shown below are separate weights. The GROSS WEIGHT is the CERTIFIED WEIGHT and was weighed on a full length platform scale.

DATE:

6-01-2005

STEER AXLE

11240 1b

SCALE

408

DRIVE AXLE

28040 1b

LOCATION:

PILOT 362

TRAILER AXLE

29020 1b

I 69 EXIT 14

\* GROSS WEIGHT

68300 1b

FORTVILLE IN

This is to certify that the following described merchandise was weighed, counted, or measured by a public or deputy weighmaster, and when properly signed and sealed shall be prima facie evidence of the accuracy of the weight shown as prescribed by law.

LIVESTOCK, PRODUCE, PROPERTY, COMMODITY, OR ARTICLE WEIGHED

FREIGHT ALL KINDS

COMPANY

SUNSHINE

TRACTOR #

824

TRAILER #

5316

FEE

8.00

WEIGHMASTER OR

WEIGHER SIGNATURE

COLLIN BUCK

FULL WEIGH

TICKET #

(IF REWEIGH)

DRIVER IN TRUCK UNLESS CHECKED HERE: \_\_\_\_\_

© 1998 CAT Scale Company

CAT SCALE  
COLLECT  
CARD  
INSIDE

WW/IC

Straight Bill of Lading  
 Short Form Original Not-Neg

FROM: Ryder Integrated Logistics

SHIP FROM: INDY X-DOCK  
 2379 HADLEY RD.  
 PLAINFIELD, IN 46168  
 1-317-839-8400  
 CONTACT: JERRY FARNHAM

AGENT FOR SHIPPER BELOW:  
 SHIP TO: WORLDWIDE BATTERY  
 516 MERIDIAN  
 ANDERSON, IN 46016  
 1-765-643-4001  
 CONTACT: LINDY BATT

Subject to Section 7 of condition, of applicable Bill of Lading, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement.  
 The carrier shall not make delivery of this shipment without payment of freight and all other charges.  
 Ryder Integrated Logistics

Per \_\_\_\_\_ (Signature of Consignor)  
 If charges are to be prepaid Write or stamp here "To Be Prepaid" To Be Prepaid

WHSE. B/L NO.	SHIPPER'S REF NO.
SHIP DATE 6-1-05	SHIPPER'S WHSE NO. 896
RECEIVED DATE	CUSTOMER CODE

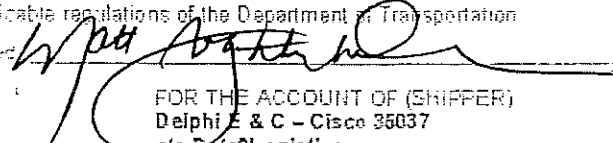
ROUTING: J+S Trucking CARRIER SCAC CODE HCIN VEHICLE NO. 5316 CARRIER PRO NO.

CUSTOMER P.O. NO. SCRAP BATTERIES DELIVERY RECEIPT NO. SCRAP BATTERIES

NUMBER OF PACKAGES	Q	DESCRIPTION OF INSTRUCTIONS	WEIGHT (SUB TO CORR.)	PART NUMBER	NMFC ITEM NUMBER	CLASS	LINE NUMBER	CHECK CODE
18	X	BATTERIES, wet, filled with acid 6, (corrosive material) UN 2794, PG III Emergency Response Guide #154 Batteries, Electric Storage, Assembled, N.O.I. Value Not To Exceed \$2.00 Per Pound. (NMFC IT. 60720-2)	36,000					
		Batteries, Electric storage, Assembled, N.O.I., Value Not To Exceed \$2.00 Per Pound (NMFC IT. 60720-2)						
		Battery boxes, Plastic, N.O.I. (In Boxes Or Wrapped And Secured To Pallets) (NMFC IT. 60740)						
		Battery Covers Or Vents, Plastic, N.O.I. (In Boxes) (NMFC IT. 60800)						
		Battery Insulating Partitions, Plastic (In Boxes) (NMFC IT. 60840)						
		Battery Parts, Lead, N.O.I. (NMFC IT. 60880)						
		Battery Plates, Lead (NMFC IT. 60875)						
		Boxes, Fibre Board, Corrugated, N.O. Flt (NMFC IT. 20275)						
18	X	← TOTAL →	36,000					

This is an Interstate Shipment Unless Otherwise Noted "Interstate Shipment"

It is to certify that the above named materials are properly classified, described, packaged, marked and labeled and are in proper condition for transport in accordance with applicable regulations of the Department of Transportation

Prepared by   
 FOR THE ACCOUNT OF (SHIPPER)  
 Delphi E & C - Cisco 35037  
 c/o Data2Logistics  
 42 Thomas Patten Dr.  
 Randolph, MA 02368

SEND FREIGHT BILL TO  
 Delphi E & C - Cisco 35037  
 c/o Data2Logistics  
 42 Thomas Patten Dr  
 Randolph, MA 02368

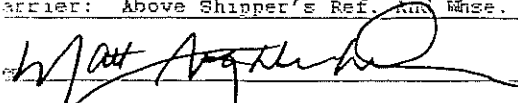
Press Hard You Are Making 4 Copies

WW/JC

00004

6-1-05

Carrier: Above Shipper's Ref. Num. Whse. B/L No. Must Appear On All Freight Bills.

Carrier:  Per: Ryder  
 Permanent P.O. address of shipper, Delphi Energy & Engine Management Systems Agent, James Patten  
 Mark with "X" to designate hazardous materials as defined in the Dept. of Transportation regulations governing transport of hazardous materials. The use of the column is an optional method of designating hazardous materials on Bills of Lading

**STRAIGHT BILL OF LADING—SHORT FORM—ORIGINAL—NOT NEGOTIABLE**

RECEIVED, subject to the classifications and lawfully filed tariffs in effect on the date of issue of this Bill of Lading.

DESIGNATE WITH AN (X)  
**BY TRUCK** ☐ **FREIGHT** ☐

The property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said carrier (the word carrier being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its route, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the terms and conditions of the Uniform Domestic Straight Bill of Lading set forth (1) in Uniform Freight Classification in effect on the date hereof, if this is a rail or a rail-water shipment, or (2) in the applicable motor carrier classification or tariff if this is a motor carrier shipment. Shipper hereby certifies that he is familiar with all the terms and conditions of the said bill of lading, set forth in the classification or tariff which governs the transportation of this shipment, and the said terms and conditions are hereby agreed to by the shipper and accepted for himself and his assigns.

From **EAGLE BATTERY, INC.**  
At **538 Meridian Street**  
**Anderson, Indiana 46016**

DATE **6-1-05** SHIPPER'S NO. **E 6801**

CARRIER **S S Trucking** CARRIER'S NO.

BY ROUTE DELIVERING CARRIER

CONSIGNEE  
AND  
DESTINATION

**RSR Delphi**  
**7870 W. Morris**  
**Indianapolis, IN 46231**

CAR OR VEHICLE  
INITIALS & NO.

NO. PACKAGES	HT	DESCRIPTION OF ARTICLES, SPECIAL MARKS AND EXCEPTIONS	ERG #	WEIGHT (SUBJECT TO CORR.)	CLASS OR RATE	✓	
<b>17</b>		<b>skids of scrap batteries</b>		<b>48,150</b>			Subject to Section 7 of Conditions applicable bill of lading, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement: The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.
		<b>TRUCK # 824</b>					Per (Signature of Consignor)
		<b>TRAILER # 5317-5316</b>					If charges are to be prepaid, write stamp here, "To be Prepaid."
		<b>DOI # 6256-896-B</b>					Received \$ to apply in prepayment of the charges on the property described hereon.
		<b>Batteries, Wet Filled With Acid, Electric Storage 8, UN 2794, 111, Corrosive</b>					Agent or Cashier
		<b>Emergency Response: CHEMTREC (800) 424-9300</b>					Per (The signature here acknowledges only the amount prepaid).

PLACARDS SUPPLIED ☐ YES ☐ NO

DRIVER'S SIGNATURE

EMERGENCY RESPONSE PHONE NO.

SHIPPER'S CERTIFICATION: This is to certify that the above-named materials are properly classified, described, packaged, marked and labeled, and are in proper condition for transportation according to the applicable regulations of the Department of Transportation.

SIGNATURE

TITLE

\* If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight".  
† Shipper's imprints in lieu of stamp; not a part of Bill of Lading approved by the Interstate Commerce Commission.  
Note — Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.  
The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding

THIS SHIPMENT IS CORRECTLY DESCRIBED.

†The fibre boxes used for this shipment conform to the specifications set forth in the box makers certificate thereon, and all other requirements of the Consolidated Freight Classification.

CORRECT WEIGHT IS LBS.

Per

Shipper

C.O.D. SHIPMENT

C.O.D. Amt.

Collection Fee

Total Charges

**EAGLE BATTERY INC.**

**(765) 643-4001**

**538 Meridian St. Anderson, Indiana 46016**

Shipper, Per **Johal, C**

**6-1-05**

Agent, Per **J. P. ...**

Permanent post-office address of shipper



99504014

Doc 5864 Filed 11/27/06 Entered 11/28/06 12:46:14 Main  
The CAT Scale Company guarantees that our scales will give an accurate weight. What makes  
us different from other scale companies is that we back up our guarantee with cash.<sup>®</sup>

TICKET NUMBER

**CERTIFIED  
AUTOMATED  
TRUCK  
SCALE**CAT SCALE COMPANY  
P.O. BOX 630  
WALCOTT, IA 52773  
(563) 284-6263  
www.catscale.com

IF YOU SHOULD GET AN OVERWEIGHT FINE, YOU SHOULD DO THE FOLLOWING TO GET THE PROBLEM RESOLVED:

- 1) Post bond and request a court date.
- 2) Call CAT Scale Company direct 24 hours a day at 1-877-CAT-SCALE (Toll Free).
- 3) **IMMEDIATELY** send a copy of the citation, CAT Scale Ticket, your name, company, address, and phone number to CAT Scale Company Attn: Operations Manager.

\* The four weights shown below are separate weights. The GROSS WEIGHT is the CERTIFIED WEIGHT  
and was weighed on a full length platform scale.

DATE:

6-01-2005

STEER AXLE

11420 1b

DRIVE AXLE

28520 1b

TRAILER AXLE

29920 1b

\* GROSS WEIGHT

69860 1b

SCALE

359

LOCATION:

PILOT

PUBLIC WEIGHMASTER'S

CERTIFICATE OF  
WEIGHT & MEASURE

I 65 EXIT 201

REMINGTON IN

IMPRINT SEAL HERE  
(IF APPLICABLE)This is to certify that the following described merchandise was weighed, counted, or measured by a  
public or deputy weighmaster, and when properly signed and sealed shall be prima facie evidence of the  
accuracy of the weight shown as prescribed by law.

LIVESTOCK, PRODUCE, PROPERTY, COMMODITY, OR ARTICLE WEIGHED

FREIGHT ALL KINDS

COMPANY

S AND S

TRACTOR #

824

TRAILER #

5317

WEIGH NUMBER

4014

FEE

8.00

WEIGHMASTER OR  
WEIGHER SIGNATURE

YOLANDA VILLEGAS

FULL WEIGH  
TICKET #  
(IF REWEIGH)

DRIVER IN TRUCK UNLESS CHECKED HERE: \_\_\_\_\_

© 1998 CAT Scale Company®

**CAT SCALE  
COLLECTOR  
CARD  
INSIDE!**

CUSTOMER COPY

WW/IC

<b>SHIP FROM :</b> Delphi Prod & Svc Solutions 471 Quadrangle Dr. Bolingbrook IL 60440 (800) 628-7020  <b>SHIP TO :</b> Worldwide Battery 538 Meridian  Anderson IN 46016	<b>Ship Date</b> 5/31/2005	<b>STRAIGHT BILL OF LADING</b> Short Form Original Not-Negotiable
	<b>SEAL #1</b> 8802	Subject to Section 7 of conditions, of applicable Bill of Lading, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement. The carrier shall not make delivery of the shipment without payment of freight and all other lawful charges.  DELPHI AUTOMOTIVE  Per _____ (Signature of Consignor)
	<b>SEAL #2</b> 0	
	<b>SEAL #3</b> 0	
	<b>SEAL #4</b> 0	
If charges are to be prepaid, write or stamp here, "To Be Prepaid."		TO BE PREPAID

BOL No.	Truck No.	Carrier Name	Carrier SCAD Code	Carrier PRO NO.
6256	5317	S&S Trucking	HCIN	

Pallets	HM	Description Instructions	Items	Weight
18	x	Batteries, wet, filled with acid, 8 (Corrosive Material), UN 2794, PG III : Emergency Response Guide #154 - Batteries, Electric Storage, Assembled, N.O.L., Value Not To Exceed \$2.00 per pound. (NMFC II. 60720-2)	1179	41172lbs
		Scrap Lead (Wheel weights)	0	0lbs

<b>TOTALS :</b>	1179	41172lbs
-----------------	------	----------

This is to certify that the above named materials are properly classified, described, packaged, marked and labeled and are in proper condition for transportation according to the applicable regulations of the Department of Transportation.

(Signed) \_\_\_\_\_

3rd Party Prepaid  
 DELPHI E&C - Cisco Code 35037  
 C/O Data2Logistics  
 42 Thomas Patten Dr.  
 Randolph, MA 02368

WW/JC  
 00004

5-31-05

S+S

Per \_\_\_\_\_

Per *James Patten*

(HM)- Mark with 'X' to designate hazardous materials as defined in the Dept. of Trans. regulations governing transportation of hazardous materials. The use of the column is a method of designating hazardous materials on Bill of Lading per sec 172.301 and 172.202h of the regulations governing

95-44481-rdd  
93925698

TICKET NUMBER

**CERTIFIED  
AUTOMATED  
TRUCK  
SCALE**CAT SCALE COMPANY  
P.O. BOX 630  
WALCOTT, IA 52773  
(563) 284-6263  
www.catscale.com

1339

95925698

SCALE

LOCATION:

PUBLIC WEIGHMASTER'S

CERTIFICATE OF  
WEIGHT & MEASUREIMPRINT SEAL HERE  
(IF APPLICABLE)

WEIGH NUMBER

5698

CUSTOMER COPY

Doc 5864 Filed 11/27/06 Entered 11/28/06 12:46:14 Main Doc

The CAT Scale Company guarantees that our scales will give an accurate weight. What makes us different from other scale companies is that we back up our guarantee with cash.<sup>®</sup>**"WEIGH WHAT WE SAY OR WE PAY"<sup>®</sup>**If you get an overweight fine from the state **AFTER** one of our CAT Scales showed a legal weight, we will immediately check our scale and we will **REIMBURSE** you.

- (1) Reimburse you for the cost of the overweight fine if our scale is wrong, OR
- (2) A representative of CAT Scale Company will appear in court **WITH** the driver as an expert witness if we believe our scale was correct.

IF YOU SHOULD GET AN OVERWEIGHT FINE, YOU SHOULD DO THE FOLLOWING TO GET THE PROBLEM RESOLVED:

- 1) Post bond and request a court date.
- 2) Call CAT Scale Company direct 24 hours a day at 1-877-CAT-SCALE (Toll Free).
- 3) **IMMEDIATELY** send a copy of the citation, CAT Scale Ticket, your name, company, address, and phone number to CAT Scale Company Attn: Operations Manager.

\* The four weights shown below are separate weights. The GROSS WEIGHT is the CERTIFIED WEIGHT and was weighed on a full length platform scale.

DATE:

6-02-2005

STEER AXLE

11340 1b

DRIVE AXLE

27920 1b

TRAILER AXLE

30820 1b

\* GROSS WEIGHT

70080 1b

This is to certify that the following described merchandise was weighed, counted, or measured by a public or deputy weighmaster, and when properly signed and sealed shall be prima facie evidence of the accuracy of the weight shown as prescribed by law.

LIVESTOCK, PRODUCE, PROPERTY, COMMODITY, OR ARTICLE WEIGHED

FREIGHT ALL KINDS

COMPANY

LANDSTAR RANGER

TRACTOR #

435252

TRAILER #

637378

FEE

8.00

WEIGHMASTER OR  
WEIGHER SIGNATURE*Phyllis Dennis*  
PHYLLIS DENNISFULL WEIGH  
TICKET #  
(IF REWEIGH)

DRIVER IN TRUCK UNLESS CHECKED HERE: \_\_\_\_\_

© 1998 CAT Scale Company

WW/ICI

NAME OF CARRIER: **Landstar**

Pg 44 of 61

PAGE 1 OF 1

Received, subject to the classifications and tariffs in effect on the date of the issue of the Bill of Lading.

Straight Bill of Lading  
Short Form Original NotFROM: **Ryder Integrated Logistics**SHIP FROM: **Delta Cross Dock (Ryder)**1140 main st.  
Delta, Oh 43515  
419-559-1062

Subject to Section 7 of condition, of applicable Bill of Lading, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

The carrier shall not make delivery of this shipment without payment of freight and all other charges.

Ryder Integrated Logistics

Per **Robert**If charges are to be prepaid  
Write or stamp here "To Be Prepaid"

To Be Prepaid

AS AGENT FOR SHIPPER BELOW:

SHIP TO: **WORLDWIDE BATTERY**  
516 MERIDIAN  
ANDERSON, IN 46016  
1-765-643-4001

WHSE. B/L NO.	SHIPPER'S REF NO.
SHIP DATE 6-2-05	SHIPPER'S WHSE NO. 896
RECEIVED DATE	CUSTOMER CODE

ROUTING: **Landstar** CARRIER SCAC CODE **HCIN** VEHICLE NO. **637378** CARRIER PRO NO.CUSTOMER P.O. NO. **SCRAP BATTERIES**DELIVERY RECEIPT NO. **SCRAP BATTERIES**

NUMBER OF PACKAGES	HM	DESCRIPTION OF INSTRUCTIONS	WEIGHT (SUB TO CORR.)	PART NUMBER	NMFC ITEM NUMBER	CLASS	LINE NUMBER	CHECK
1,150 pieces	X	BATTERIES, wet, filled with acid B, (corrosive material) UN 2794, PG III Emergency Response Guide #154 Batteries, Electric Storage, Assembled, N.O.I., Value Not To Exceed \$2.00 Per Pound. (NMFC IT. 60720-2)	41,500 lbs. (19 Pallets)					
19 Pallets		Batteries, Electric Storage, Assembled, N.O.I., Value Not To Exceed \$2.00 Per Pound (NMFC IT. 60720-2)						
		Battery boxes, Plastic, N.O.I. (In Boxes Or Wrapped And Secured To Pallets) (NMFC IT. 60740)						
		Battery Covers Or Vents, Plastic, N.O.I. (In Boxes) (NMFC IT. 60800)						
		Battery Insulating Partitions, Plastic (In Boxes) (NMFC IT. 60840)						
		Battery Parts, Lead, N.O.I. (NMFC IT. 60880)						
		Battery Plates, Lead (NMFC IT. 82675)						
		Boxes, Fibre Board, Corrugated, K.D. Flat (NMFC IT. 29275)						
19								
1,150 pieces		← TOTAL →	41,500 lbs.					

This is an Interstate Shipment Unless Otherwise Noted: "Intrastate Shipment"

This is to certify that the above named materials are properly classified, described, packaged, marked and labeled and are in proper condition for transportation according to the

Applicable regulations of the Department of Transportation.

Signed

Press Hard You Are making 4 Copies

FOR THE ACCOUNT OF (SHIPPER)

3<sup>rd</sup> Party Prepaid  
Delphi E & C - Cisco 36037  
c/o Data2Logistics  
42 Thomas Patten Dr.  
Randolph, MA 02368

SEND FREIGHT BILL TO:

3<sup>rd</sup> Party Prepaid  
Delphi E & C Cisco 36037  
c/o Data2Logistics  
42 Thomas Patten Dr.  
Randolph, MA 02368

Carrier: Above Shipper's Ref. And Whse. B/L No. Must Appear on all Freight Bills.

Per

Per

RYDER

000051

RECEIVED, subject to the classifications and lawfully filed tariffs in effect on the date of issue of this Bill of Lading.

BY TRUCK ☐ FREIGHT

The property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said carrier (the word carrier being understood throughout H-1 as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its route, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed by and between the shipper and said carrier that the property herein described shall be transported under and subject to the Uniform Domestic Straight Bill of Lading set forth (1) in Uniform Freight Classification in effect on the date hereof, if this is a rail or a rail-water shipment, or (2) in the applicable motor carrier classification or tariff if this is a motor carrier shipment. The shipper hereby certifies that he is familiar with all the terms and conditions of the said bill of lading, set forth in the classification or tariff which governs the transportation of this shipment, and the said terms and conditions are hereby accepted by the shipper and accepted for himself and his assigns.

From **EAGLE BATTERY, INC.**  
At **538 Meridian Street**  
**Anderson, Indiana 46016**

DATE	SHIPPER'S NO.
6-2-05	E 6795

<b>CARRIER</b>	<b>CARRIER'S NO.</b>
BY	

CONSIGNEE  
AND  
DESTINATION

RSR - Delphi  
7870 W. Morris  
Indianapolis, IN 46231

S : S Trucking

ROUTE	DELIVERING CARRIER
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CAR OR VEHICLE  
INITIALS & NO.

NO. OF PACKAGES	HM	DESCRIPTION OF ARTICLES, SPECIAL MARKS AND EXCEPTIONS	ERG #	WEIGHT (SUBJECT TO CORR.)	CLASS OR RATE	✓
17		Skids of scrap batteries		48,150		<p>Subject to Section 7 of Cor applicable bill of lading, if this ship be delivered to the consignee, the consignee shall sign the following statement:</p> <p>The carrier shall not make this shipment without payment and all other lawful charges.</p> <p>Per _____</p> <p>(Signature of Consignor)</p> <p>If charges are to be prepaid stamp here, "To be Prepaid."</p> <p>Received \$ _____</p> <p>to apply in prepayment of the of the property described hereon.</p> <p>Agent or Cashier</p> <p>Per _____</p> <p>(The signature here acknowledges the amount prepaid).</p>
		truck# 824				
		trailer# 5316-5310				
		bol# 896-P				
		Batteries, Wet Filled With Acid, Electric Storage 8, UN 2794, 111, Corrosive				
		Emergency Response: CHEMTREC (800) 424-9300				
PLACARDS SUPPLIED <input type="checkbox"/> YES <input type="checkbox"/> NO			DRIVER'S SIGNATURE		EMERGENCY RESPONSE PHONE NO.	

**SHIPPERS CERTIFICATION:** This is to certify that the above-named materials are properly classified, described, packaged, marked and labeled, and are in proper condition for transportation according to the applicable regulations of the Department of Transportation.

SIGNATURE \_\_\_\_\_ TITLE \_\_\_\_\_

\* If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight"

Note - Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property. The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding \_\_\_\_\_

THIS SHIPMENT IS CORRECTLY DESCRIBED.

†The fibre boxes used for this shipment conform to the specifications set forth in the box makers certificate thereon, and all other requirements of the Consolidated Freight Classification.

Per \_\_\_\_\_ Shipper \_\_\_\_\_

**EAGLE BATTERY INC.**

(765) 643-4001

538 Meridian St. Anderson, Indiana 46016

Shipper, Per JOHN. C.

Agent, Per

Permanent post-office address of shipper

C.O.D. SHIPMENT

C.O.D. Aml \_\_\_\_\_

Collection Fee\_\_\_\_\_

Total Charges \_\_\_\_\_

99284182

05-44481-rdd

Doc 5864

Filed 11/27/05

THE CAT SCALE GUARANTEE

Entered 11/28/06 12:46:14

Ma

TICKET NUMBER

The CAT Scale Company guarantees that our scales will give an accurate weight. What makes us different from other scale companies is that we back up our guarantee with cash.

CAT SCALE  
COLLECTOR  
CARD  
INSIDE!



**"WEIGH WHAT WE SAY OR WE PAY"®**

If you get an overweight fine from the state AFTER one of our CAT Scales showed a legal weight, we will immediately check our scale and we will:

- (1) Reimburse you for the cost of the overweight fine if our scale is wrong, **OR**
- (2) A representative of CAT Scale Company will appear in court WITH the driver as an expert witness if we believe our scale was correct.

**CERTIFIED  
AUTOMATED  
TRUCK  
SCALE**

CAT SCALE COMPANY  
P.O. BOX 630  
WALCOTT, IA 52773  
(563) 284-6263  
www.catscale.com

IF YOU SHOULD GET AN OVERWEIGHT FINE, YOU SHOULD DO THE FOLLOWING TO GET THE PROBLEM RESOLVED:

- 1) Post bond and request a court date.
- 2) Call CAT Scale Company direct 24 hours a day at 1-877-CAT-SCALE (Toll Free).
- 3) **IMMEDIATELY** send a copy of the citation, CAT Scale Ticket, your name, company, address, and phone number to CAT Scale Company Attn: Operations Manager.

\* The four weights shown below are separate weights. The GROSS WEIGHT is the CERTIFIED WEIGHT and was weighed on a full length platform scale.

DATE:

6-22-2005

STEER AXLE

11240 16

DRIVE AXLE

31660 16

TRAILER AXLE

28620 16

\* GROSS WEIGHT

71520 16

1541

SCALE

99284182

LOCATION:

PUBLIC WEIGHMASTER'S

CERTIFICATE OF

WEIGHT & MEASURE

408

PILOT 362

I 69 EXIT 14

FORTVILLE IN

IMPRINT SEAL HERE  
(IF APPLICABLE)

This is to certify that the following described merchandise was weighed, counted, or measured by a public or deputy weighmaster, and when properly signed and sealed shall be prima facie evidence of the accuracy of the weight shown as prescribed by law.

LIVESTOCK, PRODUCE, PROPERTY, COMMODITY, OR ARTICLE WEIGHED

FREIGHT ALL KINDS

COMPANY S AND S

TRACTOR # 824

TRAILER # 5315

FEE 8.00

WEIGHMASTER OR  
WEIGHER SIGNATURE

KRISTINA DICK

FULL WEIGH  
TICKET #  
(IF REWEIGH)

DRIVER IN TRUCK UNLESS CHECKED HERE: \_\_\_\_\_

WEIGH NUMBER

4182

NAME OF CARRIER: HUB/S &amp; S Trucking

Pg 47 of 61

PAGE: 1 OF:

received, subject to the classifications and tariffs in effect on the date of the issue of the Bill of Lading.

Straight Bill of Lading  
Short Form Original Not-Negotiable

FROM: Ryder Integrated Logistics

SHIP FROM: INDY X-DOCK

2379 HADLEY RD.

PLAINFIELD, IN 46168

1-317-839-8400

CONTACT: JERRY FARNHAM

AGENT FOR SHIPPER BELOW:

SHIP TO: WORLDWIDE BATTERY

516 MERIDIAN

ANDERSON, IN 46016

1-765-643-4001

CONTACT: RANDY BATT

Subject to Section 7 of condition, of applicable Bill of Lading, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement.

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

Ryder Integrated Logistics

Per

(Signature of Consignor)

If charges are to be prepaid  
write or stamp here "To Be Prepaid"

To Be Prepaid

WHSE. B/L NO.

SHIPPER'S REF NO.

SHIP DATE

SHIPPER'S WHSE NO.

SHIP TO DATE

CUSTOMER CODE

6-2-05  
5316

896

CUSTOMER P.O. NO.

CARRIER BLAC CODE HCIN

VEHICLE NO.

CARRIER PRO NO.

CUSTOMER P.O. NO. SCRAP BATTERIES

DELIVERY RECEIPT NO.

SCRAP BATTERIES

NUMBER OF PACKAGES	HM	DESCRIPTION OF INSTRUCTIONS	WEIGHT (SUB TO CORR.)	PART NUMBER	NMFC ITEM NUMBER	CLASS	LINE NUMBER	CHECK COLL
18	X	BATTERIES, wet, filled with acid 6, (corrosive material) UN 2794, PG III Emergency Response Guide #154 Batteries, Electric Storage, Assembled, N.O.I., Value Not To Exceed \$2.00 Per Pound. (NMFC IT. 60720-2)	40,000					
		Batteries, Electric storage, Assembled, N.O.I., Value Not To Exceed \$2.00 Per Pound (NMFC IT. 60720-2)						
		Battery boxes, Plastic, N.O.I. (In Boxes Or Wrapped And Secured To Pallets) (NMFC IT. 60740)						
		Battery Covers Or Vents, Plastic, N.O.I. (In Boxes) (NMFC IT. 60800)						
		Battery Insulating Partitions, Plastic (In Boxes) (NMFC IT. 60840)						
		Battery Parts, Lead, N.O.I. (NMFC IT. 60880)						
		Battery Plates, Lead (NMFC IT. 62675)						
		Boxes, Fibre Board, Corrugated, N.O. Flt (NMFC IT. 29275)						
18	X	← TOTAL →	40,000					

This is an Interstate Shipment Unless Otherwise Indicated "Interstate Shipment"

I hereby certify that the above named materials are properly classified, described, packaged, marked and labeled and are in proper condition for transportation according to applicable regulations of the Department of Transportation

Signed: [Signature]

Please Hand Your Are making 4 Copies

FOR THE ACCOUNT OF (SHIPPER):  
Delphi E & C - Cisco 35037  
c/o Data2Logistics  
42 Thomas Patten Dr.  
Randolph, MA 02368SEND FREIGHT BILL TO  
Delphi E & C - Cisco 35037  
c/o Data2Logistics  
42 Thomas Patten Dr  
Randolph, MA 02368

WW/J

0000

6-2-05

Note: Above Shipper's Ref. And Whse. B/L No. Must Appear On All Freight Bills.

Signed: [Signature]

Per

Ryder

Agent

[Signature]

Dominant P.O. address of shipper, Delphi Energy &amp; Engine Management Systems Agent



# SCALES

Doc 5864# Fed 11/27/06 Entered 11/28/06 12:46:14 Main Document

P.O. Box 6730, Evansville, IN 47719-0730

Ph: (812) 421-8212 Fax: (812) 421-8325

www.interstatescales.com

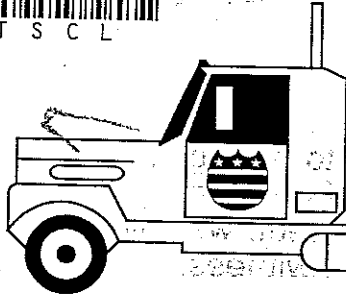
No. 929900

☐ IF REWEIGH

FIRST TICKET #



INTSCL



HOUSTON HEARTLAND TRAVEL CENTER  
I-65 & U.S. 24 EXIT #201  
REMINGTON, IN 47340

DRIVER COPY

11240 1b

28060 1b

28920 1b

68220 1b GROSS

Weigh Fee \$7.50

THE GROSS WEIGHT IS THE CERTIFIED WEIGHT

ENTIRE TRUCK MUST BE ON SCALE TO BE CERTIFIED

MULTIPLE DRAFT WEIGHTS ARE NOT LEGAL FOR TRADE

This is to certify that the following described merchandise was weighed, counted or measured by a public or deputy weighmaster, and when properly signed and sealed shall be prima facia evidence of the accuracy of the weight shown as prescribed by law.

Tractor # 717 TRUCK # 717 Trailer # 5320

Company S/S

#1 Driver Code

P.O.#

Trip #

Weighmaster M. Burch

©Hargett Enterprises, Inc. 2002. All rights reserved. No part of this document may be reproduced without the express written consent of Interstate Scales.



SHIP FROM:		Ship Date		STRAIGHT BILL OF LADING	
Delphi Prod & Svc Solutions		6/1/2005		Short Form Original Not-Negotiable	
471 Quadrangle Dr.		SEAL #1		Subject to Section 7 of conditions, of applicable Bill of Lading, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement. The carrier shall not make delivery of the shipment without payment of freight and all other lawful charges.  DELPHI AUTOMOTIVE  Per _____ (Signature of Consignor)  If charges are to be prepaid, write or stamp here, "To Be Prepaid." TO BE PREPAID	
Bolingbrook IL 60440		8895			
(800) 628-7020		SEAL #2			
SHIP TO :		0			
Worldwide Battery		SEAL #3			
538 Meridian		0			
Anderson IN 46016		SEAL #4			
		0			

BOL No.	Truck No.	Carrier Name	Carrier SCAC Code	Carrier PRO NO.
6258	5320	S&S Trucking	HCIN	

Pallets	HM	Description Instructions	Items	Weight
18	x	Batteries, wet, filled with acid, 8 (Corrosive Material), UN 2794, PG III : Emergency Response Guide #154 - Batteries, Electric Storage, Assembled, N.O.I., Value Not To Exceed \$2.00 per pound. (MFC II. 60720-2)	1144	411841
		Scrap Lead (Wheel weights)	0	01

TOTALS : 1144 411841

*David Bell*

This is to certify that the above named materials are properly classified, described, packaged, marked and labeled and are in proper condition for transportation according to the applicable regulations of the Department of Transportation.

(Signed)

6-2-05

3rd Party Prepaid  
DELPHI E&C - Cisco Code 35037  
C/O Data2Logistics  
42 Thomas Patten Dr.  
Randolph, MA 02368

Per

Per

(HM)- Mark with 'X' to designate hazardous materials as defined in the Dept. of Trans. regulations governing transportation of hazardous materials. The use of the column is a method of designating hazardous materials on Bill of Lading per sec 122.301 and 122.302b of the regulations governing

WW

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

WORLDWIDE BATTERY COMPANY, LLC,	)	CASE NO: 1:06-cv-0602-DFH-TAB
	)	
Plaintiff,	)	JUDGE: David F. Hamilton
	)	
	)	
v.	)	<b><u>DEFENDANTS JOHNSON CONTROLS,</u></b>
	)	<b><u>INC. AND JOHNSON CONTROLS</u></b>
	)	<b><u>BATTERY GROUP, INC.'S JOINT</u></b>
JOHNSON CONTROLS, INC., JOHNSON	)	<b><u>ANSWER TO PLAINTIFF'S FIRST</u></b>
CONTROLS BATTERY GROUP, INC.,	)	<b><u>AMENDED COMPLAINT</u></b>
INTERSTATE BATTERY FRANCHISING &	)	
DEVELOPMENT, INC., DENNIS	)	(Removed from the Madison County
MCDANIEL AND LARRY LARSH,	)	Circuit Court, Cause No. 48C01-0603-PL-
	)	00297)
Defendants.	)	
	)	
	)	

Defendants Johnson Controls, Inc. ("JCI") and Johnson Controls Battery Group, Inc., ("JCI Battery Group") (collectively, the "JCI Defendants"), for their Answer to the First Amended Complaint ("Plaintiff's Complaint") of Plaintiff WorldWide Battery Company, LLC ("WorldWide" or "Plaintiff"), state as follows:

1. JCI Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of Plaintiff's Complaint and therefore deny the allegations.
2. JCI Defendants admit the allegations contained in Paragraph 2 of Plaintiff's Complaint.
3. JCI Defendants admit the allegations contained in Paragraph 3 of Plaintiff's Complaint.
4. Upon information and belief, JCI Defendants admit that Interstate Battery

Franchising & Development, Inc. is a corporation organized and existing under the laws of the State of Delaware, but are without knowledge or information sufficient form a belief as to the truth of the remaining allegations contained in Paragraph 4 of Plaintiff's Complaint and therefore deny the remaining allegations contained in Paragraph 4 of Plaintiff's Complaint.

5. Upon information and belief, JCI Defendants admit the allegations contained in Paragraph 5 of Plaintiff's Complaint.

6. Upon information and belief, JCI Defendants admit the allegations contained in Paragraph 6 of Plaintiff's Complaint.

7. JCI Defendants deny the allegations contained in Paragraph 7 of Plaintiff's Complaint. Further answering, JCI Defendants state that JCI is the 48% owner of Interstate Battery Systems International, Inc., which is the corporate parent of, among other entities, Retail Acquisition & Development, Inc., which is the corporate parent of, among other entities, Interstate Battery Franchising & Development, Inc. (defined as "Interstate Battery" in Plaintiff's Complaint).

8. In response to Paragraph 8 of Plaintiff's Complaint, JCI Defendants admit that a copy of a document captioned "Recycled Battery Sales Agreement" to which the JCI Defendants were not signatories is attached as Exhibit A to Plaintiff's Complaint, and state that the terms of the document speak for themselves. JCI Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 8 of Plaintiff's Complaint and therefore deny the remaining allegations.

9. In response to Paragraph 9 of Plaintiff's Complaint, JCI Defendants admit that a copy of a document captioned "Recycled Battery Sales Agreement" to which the JCI Defendants were not signatories is attached as Exhibit A to Plaintiff's Complaint, and state that the terms of

the document speak for themselves. JCI Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 9 of Plaintiff's Complaint and therefore deny the remaining allegations.

10. JCI Defendants deny the allegations contained in Paragraph 10 of Plaintiff's Complaint.

11. JCI Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11 of Plaintiff's Complaint and therefore deny the allegations.

12. JCI Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12 of Plaintiff's Complaint and therefore deny the allegations.

13. JCI Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 13 of Plaintiff's Complaint and therefore deny the allegations.

14. In response to Paragraph 14 of Plaintiff's Complaint, JCI Defendants admit that a copy of a document captioned "Recycled Battery Sales Agreement" is attached as Exhibit A to Plaintiff's Complaint, and state that the terms of the document speak for themselves. JCI Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 14 of Plaintiff's Complaint and therefore deny the remaining allegations.

15. In response to Paragraph 15 of Plaintiff's Complaint, JCI Defendants admit that a copy of a document captioned "Recycled Battery Sales Agreement" is attached as Exhibit A to Plaintiff's Complaint, and state that the terms of the document speak for themselves. JCI

Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 15 of Plaintiff's Complaint and therefore deny the remaining allegations.

16. In response to Paragraph 16 of Plaintiff's Complaint, JCI Defendants admit that on or about June 30, 2005, JCI purchased certain of Delphi's battery-related assets, but in the United States JCI only assumed those assets expressly agreed upon by the parties. JCI did not assume the Recycled Battery Sales Agreement or any liabilities related thereto. JCI Defendants deny the remaining allegations contained in Paragraph 16 of Plaintiff's Complaint.

17. JCI Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 17 of Plaintiff's Complaint and therefore deny the allegations.

18. JCI Defendants deny the allegations contained in Paragraph 18 of Plaintiff's Complaint. Answering further, JCI Defendants do admit that certain batteries were shipped to WorldWide after the Delphi sale of assets to JCI, but JCI was under no contractual obligation to ship such batteries and WorldWide was under no contractual obligation to accept such batteries.

19. JCI Defendants admit that JCI Defendants ceased shipments to WorldWide, but deny the remaining allegations contained in Paragraph 19 of Plaintiff's Complaint.

20. JCI Defendants admit that there was a meeting in September 2005, but deny the remaining allegations contained in Paragraph 20 of Plaintiff's Complaint.

21. JCI Defendants deny the allegations contained in Paragraph 21 of Plaintiff's Complaint.

22. JCI Defendants admit that WorldWide claimed that WorldWide was entitled to bind JCI Defendants to the Recycled Battery Sales Agreement, but JCI Defendants denied then

and deny now that JCI Defendants are or were bound by this agreement. JCI Defendants deny the remaining allegations contained in Paragraph 22 of Plaintiff's Complaint.

23. JCI Defendants admit the allegations contained in Paragraph 23 of Plaintiff's Complaint.

24. In response to Paragraph 24 of Plaintiff's Complaint, JCI Defendants admit that in or around November 2005, JCI sent a letter to WorldWide, and state that the terms of the letter speak for themselves. JCI Defendants deny the remaining allegations contained in Paragraph 24 of Plaintiff's Complaint.

25. JCI Defendants admit that JCI proposed entering into a new agreement with WorldWide and state further that since the parties did not enter into an agreement, JCI has no contractual obligations to WorldWide. JCI Defendants deny the remaining allegations contained in Paragraph 25 of Plaintiff's Complaint.

26. JCI Defendants deny that their conduct was wrongful. JCI Defendants are without knowledge or information sufficient form a belief as to the truth of the remaining allegations contained in Paragraph 26 of Plaintiff's Complaint and therefore deny the remaining allegations contained in Paragraph 26 of Plaintiff's Complaint.

27. In response to Paragraph 27 of Plaintiff's Complaint, JCI Defendants admit that there is a document attached to Plaintiff's Complaint as Exhibit B. JCI Defendants deny the remaining allegations contained in Paragraph 27 of Plaintiff's Complaint.

28. JCI Defendants state that Paragraph 28 of Plaintiff's Complaint contains statements of law to which no responsive pleading is required. To the extent that Paragraph 28 of Plaintiff's Complaint is determined to contain factual allegations, JCI Defendants deny the allegations.

29. To the extent they relate to Delphi, JCI Defendants deny the allegations contained in Paragraph 29 of Plaintiff's Complaint. JCI Defendants state that the remainder of Paragraph 29 of Plaintiff's Complaint contains statements of law to which no responsive pleading is required. To the extent that Paragraph 29 of Plaintiff's Complaint is determined to contain factual allegations relating to JCI Defendants, JCI Defendants deny the allegations.

30. JCI Defendants state that Paragraph 30 of Plaintiff's Complaint contains statements of law to which no responsive pleading is required. To the extent that Paragraph 30 of Plaintiff's Complaint is determined to contain factual allegations, JCI Defendants deny the allegations.

31. JCI Defendants state that Paragraph 31 of Plaintiff's Complaint contains statements of law to which no responsive pleading is required. To the extent that Paragraph 31 of Plaintiff's Complaint is determined to contain factual allegations, JCI Defendants deny the allegations.

32. JCI Defendants state that Paragraph 32 of Plaintiff's Complaint contains statements of law to which no responsive pleading is required. To the extent that Paragraph 32 of Plaintiff's Complaint is determined to contain factual allegations, JCI Defendants deny the allegations.

33. JCI Defendants state that Paragraph 33 of Plaintiff's Complaint contains statements of law to which no responsive pleading is required. To the extent that Paragraph 33 of Plaintiff's Complaint is determined to contain factual allegations, JCI Defendants deny the allegations.

34. JCI Defendants state that Paragraph 34 of Plaintiff's Complaint contains statements of law to which no responsive pleading is required. To the extent that Paragraph 34

of Plaintiff's Complaint is determined to contain factual allegations, JCI Defendants deny the allegations.

35. Upon information and belief, JCI Defendants admit the allegations contained in Paragraph 35 of Plaintiff's Complaint.

36. JCI Defendants deny the allegations contained in Paragraph 36 of Plaintiff's Complaint.

37. JCI Defendants state that Paragraph 37 of Plaintiff's Complaint contains statements of law to which no responsive pleading is required. To the extent that Paragraph 37 of Plaintiff's Complaint is determined to contain factual allegations, JCI Defendants deny the allegations.

38. JCI Defendants state that Paragraph 38 of Plaintiff's Complaint contains statements of law to which no responsive pleading is required. To the extent that Paragraph 38 of Plaintiff's Complaint is determined to contain factual allegations, JCI Defendants deny the allegations.

39. To the extent that any allegation is not specifically admitted, it is denied.

#### **AFFIRMATIVE DEFENSES**

40. Plaintiff's Complaint fails to state a claim upon which relief can be granted.

41. Plaintiff's claims against JCI Defendants are barred to the extent that JCI Defendants are neither assignees nor purchasers of the Recycled Battery Sales Agreement which forms the basis of Plaintiff's claims.

42. Plaintiff's claims are, or may be, barred by the doctrine of waiver, laches and/or estoppel.

43. Plaintiff's claims are barred by lack of consideration.

44. Plaintiff's claims are barred by lack of mutual assent.



45. Plaintiff's damages, if any, were the direct and proximate result of the acts of third parties over which JCI Defendants have neither control nor a duty to control.

46. Plaintiff's claims are solely against Delphi, and any liability has been discharged in bankruptcy.

47. To the extent that Plaintiff suffered any damages, Plaintiff failed to mitigate its damages.

48. JCI Defendants specifically reserve the right to add additional affirmative defenses as may become available through the course of this action.

**DEMAND FOR RELIEF**

WHEREFORE, Defendants Johnson Controls, Inc. and Johnson Controls Battery Group, Inc., respectfully request that judgment be entered in their favor and against Plaintiff WorldWide Battery Company, LLC, as follows:

1. That Plaintiff's Complaint, and all claims for relief set forth therein, be dismissed, with prejudice;
2. That judgment be entered in favor of JCI Defendants and against Plaintiff on all claims for relief set forth in Plaintiff's Complaint;
3. That JCI Defendants be awarded their costs of suit; and
4. That JCI Defendants be awarded such other and further relief as this Court deems just and proper.

Respectfully submitted,

OF COUNSEL:

HAHN LOESER & PARKS LLP

/s/ Jeffrey A. Brauer

Royce R. Remington (OH #0040408)

Jeffrey A. Brauer (OH #0069908)

3300 PB Tower

200 Public Square

Cleveland, Ohio 44114-2301

Phone: (216) 621-0150

Telefax: (216) 241-2824

E-mail: [rrremington@hahnlaw.com](mailto:rrremington@hahnlaw.com)

[jabrauer@hahnlaw.com](mailto:jabrauer@hahnlaw.com)

Attorneys for Defendants

Johnson Controls, Inc. and Johnson Controls

Battery Group, Inc.

**CERTIFICATE OF SERVICE**

I certify that on the 20th day of April, 2006, the foregoing was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

Christopher S. Roberge, Esq. Elizabeth A. Roberge, Esq. Eliza K. Bradley, Esq. ROBERGE & ROBERGE 9190 Priority Way West Dr., Suite 100 Indianapolis, IN 46240  Attorneys for Plaintiff WorldWide Battery Company, LLC	Eric A. Riegner eriegner@locke.com LOCKE REYNOLDS LLP 201 North Illinois, Suite 1000 P.O. Box 44961 Indianapolis, IN 46244-0961 Phone: (317) 237-3800 Telefax: (317) 237-3900  Attorney for Defendant Interstate Battery Franchising & Development, Inc.
Donald G. Orzeske dorzeske@goblaw.com GOODIN ORZESKE & BLACKWELL, P.C. 9102 N. Meridian Street, Suite 400 Indianapolis, IN 46260 Phone: (317) 846-4000 Telefax: (317) 846-8000  Attorney for Defendant Dennis McDaniel	John C. Trimble jtrimble@lewiswagner.com LEWIS WAGNER LLP 501 Indiana Avenue, Suite 200 Indianapolis, IN 46202 Phone: (317) 237-0500 Telefax: (317) 630-2790  Attorney for Defendant Larry Larsh

/s/ Jeffrey A. Brauer

One of the Attorneys for Defendants  
Johnson Controls, Inc. and Johnson Controls  
Battery Group, Inc.

**Christopher Roberge**

---

**From:** insd\_cmecf@insd.uscourts.gov  
**Sent:** Thursday, April 20, 2006 10:13 AM  
**To:** e-filer@insd.uscourts.gov  
**Subject:** Activity in Case 1:06-cv-00602-DFH-TAB WORLDWIDE BATTERY COMPANY, LLC v. JOHNSON CONTROLS, INC. et al "Answer to Complaint (Notice of Removal)"

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U.S. District Court  
Southern District of Indiana  
Office of the Clerk  
(317) 229-3700  
[www.insd.uscourts.gov](http://www.insd.uscourts.gov)

Notice of Electronic Filing

The following transaction was received from Brauer, Jeffrey A. entered on 4/20/2006 at 10:13 AM EST and filed on 4/20/2006

**Case Name:** WORLDWIDE BATTERY COMPANY, LLC v. JOHNSON CONTROLS, INC.  
et al  
**Case Number:** 1:06-cv-602  
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